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Federal Communications Commission Record

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Before the
Federal Communications Commission
Washington, D.C. 20554

In-re:

Cable TV of Georgia Limited Partnership — CSR- 4494-T

Petition for Waiver of Section 76.502(a) of the Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 1995; Released: May 30, 1995

By the Chief, Cable Services Bureau:

1. Cable TV of Georgia Limited Partnership ("CTG"), in the above captioned proceeding, has requested a waiver of 47 C.F.R. §76.502(a), the Commission's anti-trafficking rule, for one cable system in Georgia.[1] CTG seeks this waiver to assure that the consummation of a transaction with Televiev, Inc. ("Televiev")[2] involving Skylake, the one cable system that CTG has controlled for less than three years, will not violate the anti-trafficking rule. The request is unopposed.

2. Section 76.502 of the Commission's Rules implements Section 617 of the Communications Act, as amended, that, with certain exceptions, restricts the ability of a cable operator to sell or otherwise transfer ownership in a cable system within a 36 month period following either the acquisition or initial construction of the system.[3] The Commission has broad discretion to grant waivers of the holding requirement.[4]

3. The three-year holding requirement rule, and the underlying statutory provision, are aimed at restricting transactions and other transfers that are likely to adversely affect cable rates or service in the local franchise area, and are not intended to inhibit investment in the cable industry or delay or disrupt legitimate transactions.[5] Recently, the Commission stated that unless a transaction raises serious concerns on its face or any objections filed provide other public interest bases for concern, requests for waiver of the three-year holding requirement will generally be looked on favorably.[6]

4. The 1992 Cable Act expressly exempts from the restriction: "(1) any transfer of ownership interest in any cable system which is not subject to Federal income tax liability; (2) any sale required by operation of any law or any act of any Federal agency, any State or political subdivision thereof, or any franchising authority; and (3) any sale assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor."[7] The Commission has interpreted the exemptions to apply to changes of control that are the result of tax exempt transactions, involuntary transfers and transfers involving municipally owned cable systems, and *pro forma* transfers or assignments.[8]

5. CTG states that it plans to sell five Georgia cable systems to Televiev and all but one, Skylake, have been held for more than three years. The parties propose to consummate their transaction in June, 1995, but are concerned about the anti-trafficking restriction regarding this system because CTG has held it less than three years.[9] CTG therefore is asking for a waiver of the anti-trafficking rules for Skylake and asserts that it meets the standards for a waiver for several reasons. First, the system serves only 204 subscribers, well below the 1,000 subscriber threshold necessary to obtain a blanket waiver under Section 76.502(g)(2) of the Commission's rules. Second, these 204 subscribers represent only 3.9% of the 5,201 total subscribers served by CTG's systems, well below the one-third threshold up to which "the Commission will look favorably upon waiver requests."[10] Third, the waiver request is consistent with Congressional and Commission policy because CTG's acquisition and disposition of the cable systems are not motivated by short term gain; it has owned and operated four of the five systems for no less than seven years.[11] Fourth, CTG argues that the Commission has granted at least five waivers of its anti-trafficking rule under similar facts, most of which involved a greater percentage of cable systems and subscribers not meeting the rule's requirements. Finally, according to CTG, this transaction has the blessing of the relevant local franchising authority.

6. Under the blanket waiver authority set forth in Section 76.502(g)(2) of our rules, which itself grants a waiver, the sale of the Skyline cable system would not violate the Commission's anti-trafficking prohibitions. Moreover, con-

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[1] The cable systems subject to the merger transaction, but held for 36 months or more, are as follows: Cleveland/White Co. (GA11031); Dawsonville/N. Dawson Co. (GA11032); Dahlonega/Lumpkin Co. (GA11033); and S. Dawson Co. (GA11034). The cable system subject to the merger transaction, but held for less than 36 months, an the subject of this waiver is: Skylake (CUID not assigned yet).

[2] According to CTG, Televiev is an affiliate of Standard Telephone Company ("Standard") and currently operates cable television systems in a number of rural areas in Georgia and North Carolina. Standard and Televiev will file a §214 application to purchase the systems concurrently with this petition.

[3] 47 C.F.R. § 76.502; Section 617 of the Communications Act of 1934, as amended, 47 U.S.C. § 537.

[4] 47 U.S.C. § 537(d); *see also Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, (Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions), First Report and Order*, ¶ 78, 8 FCC Rcd 6828, 6839 (1993), *recon. granted in part and denied in part, Memorandum Opinion and Order on Reconsideration of the First Report and Order*, 10 FCC Rcd _____, FCC 95-21, released January 30, 1995 (MM Docket No. 92-264); 47 C.F.R. § 76.502(g).

[5] *First Report and Order, id at*, ¶ ¶ 11, 21 & 36, 8 FCC Rcd at 6830-31, 6833.

[6] *Memorandum Opinion and Order on Reconsideration of the First Report and Order, supra. n.4 at* ¶ 79.

[7] 47 U.S.C. §537(c).

[8] *See Report and Order*, 8 FCC Rcd at 6837-39.

[9] CTG states it originally acquired the system on November 30, 1992.

[10] *See Report and Order*, 8 FCC Rcd at 6831.

[11] The Cleveland/White Co. system was acquired in 1988; the Dawsonville/N. Dawson Co. system was acquired in 1985; the Dahlonega/Lumpkin Co. system was acquired in 1982; and the South Dawson Co. system was acquired in 1986.

sistent with our waiver policy, the pertinent franchising authority has consented to the transaction. We also note that CTG would also qualify for a waiver because over two-thirds of the relevant subscribers have been held for over three years. Further, the Skylake system will reach its three-year holding threshold just after the proposed merger consummation. Thus, CTG request is well within the established waiver guidelines.

7. In view of the above, IT IS ORDERED that, the captioned request for waiver of 47 C.F.R. §76.502(a) filed by Cable TV of Georgia Limited Partnership IS GRANTED.

8. This action is taken by the Chief, Cable Services Bureau pursuant to authority delegated by Section 0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

NEBRASKA CITY SCHOOL DISTRICT 111
Tecumseh, Nebraska — File No. BPLIF-930415DE

NEMAHA VALLEY SCHOOLS
Peru, Nebraska — File No. BPLIF-920501DJ

For Construction Permit and License
in the Instructional Television Fixed
Service on Channels B1-B4

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 1995; Released: May 30, 1995

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Nebraska City School District 111 (Nebraska City) and Nemaha Valley Schools (Nemaha), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels B1-B4 in the areas of Tecumseh and Peru, Nebraska, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). Both applicants are qualified to be ITFS licensees. Both Nebraska City and Nemaha are school districts that are accredited by the Nebraska Department of Education and that are applying to serve the formal educational needs of students enrolled at schools within their respective jurisdictions.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523, (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions, or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. Both Nebraska City and Nemaha are entitled to four points for being school districts that propose to provide formal educational programming to students at schools located within their jurisdictions.

Accreditation. Both applicants are entitled to three points because they are accredited by the Nebraska Department of Education.

Four-Channel Limitation. Neither applicant is the current licensee of, or has filed applications for, additional ITFS channels in its proposed service area. Therefore, each applicant is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a programming "grid." Nebraska City's illustrative schedule and program grid propose an average of 42 hours of formal educational programming per channel per week. Thus, Nebraska City is entitled to two programming merit points. In contrast, Nemaha's illustrative schedule and program grid propose

[1] A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

an average of 24.375 hours of formal educational programming per channel per week. Thus, Nemaha is entitled only to one programming merit point.

E- and F-Channel Group Relocation. Neither applicant is the current licensee of an E or F channel seeking to relocate to other channels. Therefore, neither applicant is entitled to the one point for such applicants.

Total. Nebraska City is entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and two points for proposing at least 41 hours of formal educational programming per channel per week, for a total of eleven points. Nemaha is entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and one point for proposing at least 21 hours of formal educational programming per channel per week, for a total of ten points. Thus, the tentative selectee is Nebraska City.

OTHER MATTERS

5. No determination has been made that the tower heights of four of the receive sites proposed by Nebraska City would not constitute a hazard to air navigation. Accordingly, a grant of a construction permit/license authorization to Nebraska City will be appropriately conditioned. See *Bells Independent School District,* 9 FCC Rcd 1551, 1552 (1994).

6. Nebraska City proposes to lease its excess capacity for non-ITFS use, as permitted by 47 C.F.R. Section 74.931. Nebraska City has submitted a copy of its lease with U.S.A. Wireless, Inc., which conforms in all respects with the Commission's requirements.

7. No petitions to deny or informal objections have been filed against Nebraska City's application, and we find Nebraska City fully qualified to be an ITFS licensee. We also conclude that grant of Nebraska City's application would serve the public interest, convenience and necessity.

8. Accordingly, IT IS ORDERED, that the application of Nemaha Valley Schools (BPLIF-920501DJ) IS DENIED, and the application of Nebraska City School District 111 (BPLIF-930415DE) IS GRANTED, subject to the following:

> This authorization is subject to the condition that construction of the receive towers at receive site locations R1, R2, R5 and R7 is prohibited until clearance is received from the Federal Aviation Administration, the Commission is so notified, and appropriate painting and lighting specifications are determined.

9. IT IS FURTHER ORDERED, that the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

BOARD OF COOPERATIVE EDUCATIONAL SERVICES SOLE SUPERVISORY DISTRICT
Utica, New York — File No. BPLIF-931230FU

ALBION COMMUNITY DEVELOPMENT CORPORATION
Deerfield, New York — File No. BPLIF-930128DF

For Construction Permit and License in the Instructional Television Fixed Service on Channels B1-B4

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 1995; Released: May 30, 1995

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Board of Cooperative Educational Services Sole Supervisory District (The Board) and Albion Community Development Corporation (Albion), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels B1-B4 in the areas of Utica and Deerfield, New York, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). Both applicants are qualified to be ITFS licensees. The Board is a school district that is accredited by the New York State Education Department and that is applying to serve the formal educational needs of students enrolled at schools within its jurisdiction. Albion is a nonprofit organization located in Albion, New York, that has submitted the requisite letters of intended use from accredited schools that would use its service and that has documented the establishment of a local programming committee in the community.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523, (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions, or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. The Board is entitled to four points for being a school district that proposes to offer formal educational programming to serve students at schools located within its jurisdiction. Albion, based in Albion, New York, seeks to serve the Deerfield, New York area. Because its headquarters is not located within the area it proposes to serve, Albion is not entitled to points for being a local applicant. See *Broken Arrow Public School District #3*, 9 FCC Rcd 5783 (1994).

Accreditation. The Board is entitled to three points because it is accredited by the New York State Education Department. Although Albion proposes to serve accredited schools, a factor which satisfies its basic eligibility, it is not an accredited entity in its own right in the area it proposes to serve, the factor necessary for earning merit points un-

[1] A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

der the accreditation criterion. Therefore, Albion is not entitled to any points by this measure. See *Broken Arrow Public School District #3, supra.*

Four-Channel Limitation. Neither applicant is the current licensee of, or has filed applications for, additional ITFS channels in its proposed service area. Therefore, each applicant is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a programming "grid." Where the amounts and types of programming proposed in the schedule and in the grid are inconsistent, we shall consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. See *Hispanic Information and Telecommunications Network, Inc.*; 7 FCC Rcd 5924 (1992).

The Board's illustrative schedule proposes an average of 25.75 hours of formal educational programming per channel per week. However, its programming grid proposes an average of 22 hours of formal educational programming per channel per week. Notwithstanding this inconsistency, The Board is entitled to one programming merit point. In contrast, Albion's illustrative schedule and programming grid propose an average of 20 hours of formal educational programming per channel per week. Because the amount of programming proposed does not reach the threshold amount at which merit points are awarded, Albion is entitled to no programming merit points.

E- and F-Channel Group Relocation. Neither applicant is the current licensee of an E or F channel seeking to relocate to other channels. Therefore, neither applicant is entitled to the one point for such applicants.

Total. The Board is entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and one point for proposing at least 21 hours of formal educational programming per channel per week, for a total of ten points. Albion is entitled only to two points for observing the four-channel limitation. Thus, the tentative selectee is The Board.

OTHER MATTERS

5. The Board proposes to lease its excess capacity for non-ITFS use, as permitted by 47 C.F.R. Section 74.931. The Board has submitted a copy of its lease with United Entertainment Systems, one of whose provisions does not comply with the Commission's requirements for such leases. While the lease would not limit The Board's ability to effectuate fully the programming proposal for which it obtained comparative credit, Section 2(c) of the lease provides that the lessor reserves for any expanded ITFS program scheduling need an additional eighteen (18) hours of recapture airtime. This provision is inconsistent with Section 74.931(e)(2) of the Commission's Rules, which states that an additional 20 hours per week per channel must be reserved for recapture by the ITFS licensee for its ITFS programming. Although inconsistent with our requirements for excess capacity leases, this provision neither reflects on the applicant's basic or comparative qualifications, nor precludes grant of an authorization. Nevertheless, The Board's authorization will be conditioned upon conformity of the lease to Commission requirements.

6. No petitions to deny or informal objections have been filed against The Board's application, and we find The Board fully qualified to be an ITFS licensee. We also conclude that grant of The Board's application would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, that the application of Albion Community Development Corporation (BPLIF-930128DF) IS DENIED, and the application of Board of Cooperative Educational Services Sole Supervisory District (BPLIF-931230FU) IS GRANTED, subject to the following:

> This authorization is subject to the condition that within 30 days of the release of this Order, The Board shall submit to the Chief, Distribution Services Branch for approval, information demonstrating compliance with Commission requirements, including, if appropriate, an amended lease agreement conforming in the manner discussed herein.

8. IT IS FURTHER ORDERED, that the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

FISHBURNE MILITARY SCHOOL Harrisonburg, Virginia	File No. BPLIF-930201DC
SHENANDOAH VALLEY ACADEMY Harrisonburg, Virginia	File No. BPLIF-931230FN
C.F. RICHARDS SCHOOL Waynesboro, Virginia	File No. BPLIF-920911DA
MASSANUTTEN TECHNICAL CENTER Harrisonburg, Virginia	File No. BPLIF-931230FH
WAYNESBORO CITY SCHOOLS Harrisonburg, Virginia	File No. BPLIF-930201DD
AUGUSTA COUNTY SCHOOLS Harrisonburg, Virginia	File No. BPLIF-930201DE
ROCKINGHAM COUNTY SCHOOL BOARD Harrisonburg, Virginia	File No. BPLIF-931230FO
HUNTER MCGUIRE SCHOOL Harrisonburg, Virginia	File No. BPLIF-931230EY
STUART HALL, INC. Harrisonburg, Virginia	File No. BPLIF-930201DF

For Construction Permit and License
in the Instructional Television Fixed
Service on Channels A1-A4, B1-B4,
C1-C4 and D1-D4

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 1995; Released: May 30, 1995

By the Commission:

1. The Commission has before it for consideration four groups of applicants seeking construction permits and licenses to construct and operate Instructional Television Fixed Service (ITFS) facilities in the areas of Harrisonburg and Waynesboro, Virginia. The first group is comprised of the mutually exclusive applications of Fishburne Military School (Fishburne) and Shenandoah Valley Academy (Shenandoah), each seeking an ITFS facility to operate on Channels A1-A4 in Harrisonburg, Virginia. The second group includes the mutually exclusive applications of C.F. Richards School (C.F. Richards), Massanutten Technical Center (Massanutten) and Waynesboro City Schools (Waynesboro) for authority to operate on Channels B1-B4 in the areas of Harrisonburg or Waynesboro. The mutually exclusive applications of Augusta County Schools (Augusta) and Rockingham County School Board (Rockingham) comprise the third group which seeks to operate on Channels C1-C4 in Harrisonburg. The fourth group includes the mutually exclusive applications of Hunter McGuire School (Hunter) and Stuart Hall, Inc. (Stuart Hall), each seeking an ITFS facility to operate on Channels D1-D4 in the Harrisonburg area. Because of potential adjacent channel interference and the proximity of the communities involved, these four groups of applications must be considered as one mutually exclusive group.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). All of the applicants are qualified to be ITFS licensees. Fishburne, Shenandoah, C.F. Richards, Massanutten, Hunter and Stuart Hall are educational institutions that are accredited by the Southern Association of Colleges and Schools and that are proposing to serve the formal educational needs of their own students. Waynesboro, Augusta and Rockingham are school districts that are accredited by the Southern Association of Colleges and Schools and that are applying to provide ITFS service to students enrolled at schools within and outside their jurisdictions.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523, (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are

awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions, or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. Fishburne, Shenandoah, C.F. Richards, Massanutten, Hunter and Stuart Hall are entitled to four points for being educational institutions that propose to serve the formal educational needs of their own enrolled students. Waynesboro, Augusta and Rockingham are also entitled to four points for being school districts that propose to offer formal educational programming to serve students at schools located within their jurisdictions.

Accreditation. Each applicant is entitled to three points for being accredited by the Southern Association of Colleges and Schools.

Four-Channel Limitation. None of the applicants is the current licensee of, or has filed applications for, additional ITFS channels in the proposed service area. Therefore, each applicant is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a programming "grid." Where amounts and types of programming proposed in the schedule and the grid are inconsistent, we shall consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. *Hispanic Information and Telecommunications Network, Inc.*, 7 FCC Rcd 5924 (1992).

Fishburne, C.F. Richards, Waynesboro, Augusta and Stuart Hall are entitled to one programming merit point apiece. The illustrative schedules and programming grids of Fishburne and C.F. Richards propose an average of 21 hours of formal educational programming per channel per week. Waynesboro's illustrative schedule and programming grid propose an average of 24.5 hours of formal educational programming per channel per week, whereas those of Augusta and Stuart Hall propose an average of 22 hours and 24.75 hours of such programming, respectively. Consequently, each of these applicants is credited with one point for proposing an average of at least 21 hours of formal educational programming per channel per week.

Shenandoah, Massanutten, Rockingham and Hunter are not entitled to any programming merit points. The illustrative schedules submitted by these applicants do not indicate how many hours are devoted to formal educational programming, as required by Section IV, Question 5 of the application. Consistent with our long-standing practice, we will consider the programming set forth in the illustrative schedules as non-formal for the purpose of determining merit points.[3] *E.g., Valley View Independent School District*, 7 FCC Rcd 7228 (1992). Each of the applicants proposes in its grid an average of 21 hours of formal educational programming per channel per week. However, using the amount of ITFS programming specified in the illustrative schedule by Shenandoah (33.25 hours), Massanutten (24.125 hours), Rockingham (24.75 hours) and Hunter (35.75 hours), none of these applicants is credited with any merit points since the amounts specified do not reach the threshold amount at which points are awarded under this criterion.

E- and F-Channel Group Relocation. None of the applicants is the current licensee of an E or F channel seeking to relocate to other channels. Therefore, no applicant is entitled to the one point for such applicants.

Total. Fishburne, Augusta, C.F. Richards, Waynesboro and Stuart Hall are entitled to a total of ten points apiece: four points for being local; three points for being accredited; two points for observing the four-channel limitation; and one point for proposing at least 21 hours of formal educational programming per channel per week. Shenandoah, Massanutten, Rockingham and Hunter are entitled only to a total of nine points apiece: four points for being local; three points for being accredited; and two points for observing the four-channel limitation. Because the applications of Fishburne, Augusta and Stuart Hall are mutually exclusive only with applications receiving fewer points, Fishburne is the tentative selectee on Channels A1-A4; Augusta is the tentative selectee on Channels C1-C4; and Stuart Hall is the tentative selectee on Channels D1-D4. C.F. Richards and Waynesboro are tied as tentative selectees for Channels B1-B4. Because these applicants are tied, we must utilize our tie-breaker mechanism to determine the winning applicant for the B channels.

[1] A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

[3] Each of these applicants amended its application on August 1, 1994, to, among other things, designate as formal educational programming all of the programs set forth in its illustrative schedule. However, these amendments were filed after the "B" cut-off date of May 31, 1994 and, if considered, would upgrade the applicants' comparative position. An applicant's comparative position cannot be enhanced by amendments filed after the "B" cut-off date and, therefore, these August 1, 1994 amendments will not be considered. *See, Second Report and Order*, 101 FCC 2d at 74.

TIE-BREAKER MECHANISM

5. When the comparative procedure results in a tie among two or more applicants, the parties are given 30 days from notification to negotiate an agreement regarding division of the use of the channels. If no agreement is reached and advanced to the Commission within that time, the tentative selectee is determined through the tie-breaker mechanism detailed in *Instructional Television Fixed Service - Third Report and Order in MM Docket No. 83-523, (Third Report and Order)*, 4 FCC Rcd 4830 (1989); *Third Report and Order Reconsidered*, 5 FCC Rcd 945 (1990); and Section 74.913(d) of the Commission's Rules. This mechanism is based upon the submission by each applicant of the number of students at its proposed receive sites who are formally enrolled in classes for credit toward an academic degree or diploma or a legally required certification or license.[4] Each applicant then has 15 days to respond to any aspect of the enrollment submissions. Once this response period has expired, the Commission compares the figures to determine if any applicant's system reaches less than 80 percent as many students as another applicant's. If so, the application resulting in service to the fewer number of students is denied, and the remaining application is granted. If more than one applicant remains, the channels or channel capacity are evenly divided among the remaining applicants. Because the two applicants here did not reach an agreement regarding the use of the channels, we look to the enrollment figures submitted by each.

6. C.F. Richards submitted a letter indicating that it will serve only the 106 students attending its own school. In contrast, Waynesboro provided documentation showing that a total of 20,032 students will be served at the schools within and outside its jurisdiction that are listed as its receive sites. Because the number of students credited to C.F. Richards, 106, is less than 80 percent of the total number of students credited to Waynesboro, 20,032, Waynesboro will be authorized to operate facilities on Channels B1-B4, and the application of C.F. Richards will be denied.

OTHER MATTERS

7. Fishburne, Waynesboro, Augusta and Stuart Hall propose to lease their excess capacity for non-ITFS use, as permitted by 47 C.F.R. Section 74.931. The applicants have chosen American Telecasting, Inc. (ATI) to be their excess capacity lessee. The applicants have submitted copies of their leases with ATI, but the leases fail to conform entirely to the Commission's requirements. Although the leases provide for consultation with the four applicants regarding the location of their transmission point, another provision in each lease appears to give ATI the unilateral authority to change that site. We view this as inconsistent with the ITFS licensees' responsibility to ensure the adequacy of their service. *Second Report and Order*, 101 FCC 2d at 90. Although inconsistent with our requirements for excess capacity leases, this provision does not reflect adversely on the applicants' basic or comparative qualifications, nor preclude grant of the authorizations. Nevertheless, the authorizations of Fishburne, Waynesboro, Augusta and Stuart Hall will be conditioned upon conformity of their leases to the Commission's requirements.

8. No petitions to deny or informal objections have been filed against the applications of Fishburne, Waynesboro, Augusta and Stuart Hall, and we find each of these applicants fully qualified to be an ITFS licensee. We also conclude that grant of the applications filed by Fishburne, Waynesboro, Augusta and Stuart Hall would serve the public interest convenience and necessity.

9. Accordingly, IT IS ORDERED, that the applications of Shenandoah Valley Academy (BPLIF-931230FN), C.F. Richards School (BPLIF-920911DA), Massanutten Technical Center (BPLIF-931230FH), Rockingham County School Board (BPLIF-931230FO), and Hunter McGuire School (BPLIF-931230EY) ARE DENIED; and the applications of Fishburne Military School (BPLIF-930201DC), Waynesboro City Schools (BPLIF-930201DD), Augusta County Schools (BPLIF-930201DE), and Stuart Hall, Inc. (BPLIF-930201DF) ARE GRANTED, subject to the following condition:

> Fishburne Military School, Waynesboro City Schools, Augusta County Schools, and Stuart Hall, Inc. shall, within 30 days of the release of this Order, submit for approval by the Chief, Distribution Services Branch, information demonstrating compliance with the Commission's requirements, including, if appropriate, amended excess capacity leases conforming with the Commission's requirements discussed herein.

10. IT IS FURTHER ORDERED, that the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[4] Only receive sites specified as of the "B" cut-off date may be used in determining the number of students served. *Third Report and Order Recon., supra*. Moreover, applicants serving students other than their own must have submitted letters, also by the "B" cut-off date, from those receive sites indicating an intention to use the proposed service. 47 C.F.R. Section 74.911(c); and *Third Report and Order*, 4 FCC Rcd at 4832. Specifically, those letters, to be signed by the administrator or authority responsible for curriculum planning, must indicate that the applicant's programming offerings have been viewed and that such programming will be incorporated into the site's curricula. Further, the letters should discuss the types and amounts of programming expected to be used and an indication of the extent to which representatives from various sites will participate in the planning, scheduling, and production of the programming. 47 C.F.R. Section 74.932, Note 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-146

In the Matter of

Amendment of Section 73.202(b), RM-8557
Table of Allotments,
FM Broadcast Stations.
(Houston, Alaska)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 23, 1995; Released: May 31, 1995

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 9 FCC Rcd 7859 (1994), issued in response to a petition for rule making filed on behalf of Evangelistic Alaska Missionary Fellowship, Inc. ("petitioner") proposing the allotment of Channel 242A to Houston, Alaska, as that community's third local FM service. Petitioner filed supporting comments in response to the *Notice*. No other comments were received.

2. In view of the petitioner's stated interest in providing a third local FM service to Houston, we will allot Channel 242A to that community, as requested.

3. As stated in the *Notice*, Channel 242A can be allotted to Houston in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules without a site restriction at coordinates North Latitude 61-38-01 and West Longitude 149-50-28.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 17, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Houston, Alaska, as follows:

City	Channel No.
Houston, Alaska	221A, 232A, 242A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications for Channel 242A at Houston, Alaska, will open on **July 17, 1995** and close on **August 17, 1995**.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 242A at Houston, Alaska, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 95-60

In the Matter of

Revision to Amend Part 32, Uniform System of Accounts for Class A and Class B Telephone Companies to Raise the Expense Limit for Certain Items of Equipment from $500 to $750	RM 8448

NOTICE OF PROPOSED RULEMAKING

Adopted: May 2, 1995; Released: May 31, 1995

Comment Date: July 24, 1995
Reply Comment Date: August 8, 1995

By the Commission:

I. INTRODUCTION

1. On March 1, 1994, the United States Telephone Association ("USTA") filed a Petition for Rulemaking to amend Section 32.2000(a)(4) of the Commission's Rules. USTA requests that Section 32.2000(a)(4) be changed to increase from $500 to $2000 the current limit for expensing, rather than capitalizing, certain items of equipment.[1] USTA also requests that carriers be permitted to amortize the previously-capitalized, undepreciated investment in such embedded equipment over the remaining life of the account in which the investment is recorded.

2. The Commission issued a Public Notice inviting comments on USTA's petition.[2] Seven parties filed comments supporting USTA's petition; one party opposed the petition.[3] Three parties filed reply comments supporting the petition.[4]

3. In this Notice of Proposed Rulemaking ("NPRM"), we propose to raise the limit for expensing certain equipment from $500 to $750. We seek comments on this proposal and on whether we should permit carriers to amortize the undepreciated, embedded assets covered by such an amendment to our rules, and, if so, over what period of time.

II. BACKGROUND

4. The expense limit that USTA proposes to raise has been increased several times in the past. It was raised from $25 to $50 in 1974,[5] from $50 to $200 in 1981,[6] and most recently, from $200 to $500 in 1988.[7] These increases in the expense limit were made primarily to recognize the effects of inflation. Other factors considered by the Commission were the increased competitive environment, rapid technological changes, and the Commission's conclusion that the accounting and administrative costs of requiring carriers to capitalize assets of low dollar value exceeded any benefit that might be realized from such capitalization.[8]

III. PETITION SUMMARY, COMMENTS AND REPLIES

5. USTA proposes that we increase the limit for expensing certain equipment set forth in Section 32.2000(a)(4) from $500 to $2000. USTA claims that the current $500 limit is no longer relevant in today's competitive environment, and no longer serves the public interest. USTA believes that raising the expense limit to $2000 will bring the accounting practices of regulated companies closer to the practices of comparable, unregulated companies. USTA also requests that carriers be permitted to amortize the embedded net book value of previously capitalized amounts in each of the accounts covered by this petition. USTA proposes that the amortization take place over the remaining asset life for each account and estimates that the amortization periods would range from three to five years.

6. All of the commenters except MCI favor USTA's petition. They set forth several arguments to support their contention that raising the expense limit would serve the public interest. These commenters argue that increasing the expense limit would: lead to decreased administrative and recordkeeping costs;[9] align the accounting practices of regulated companies with those of nonregulated companies;[10] and adjust the Commission's regulations to reflect the increasingly competitive telecommunications environment.[11] Commenters state that for LECs under price cap regula-

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[1] The accounts covered by § 32.2000(a)(4) are: 2112, Motor vehicles; 2113, Aircraft; 2114, Special purpose vehicles; 2115, Garage work equipment; 2116, Other work equipment; 2122, Furniture; 2123, Office equipment; and 2124, General purpose computers.

[2] On March 23, 1994, the Commission issued a Public Notice inviting comments on USTA's petition (RM-8448).

[3] The parties that filed comments in favor are Alltel Service Corporation ("ALLTEL"), The Ameritech Operating Companies ("Ameritech"), BellSouth Telecommunications, Inc. ("BellSouth"), The Bell Atlantic Telephone Companies ("Bell Atlantic"), Pacific Bell and Nevada Bell ("Pacific/Nevada"), Roseville Telephone Company ("Roseville"), and US West Communications, Inc. ("US West"). MCI Telecommunications ("MCI") filed comments in opposition to USTA's petition.

[4] Reply comments were filed by USTA, Southwestern Bell Telephone Company ("SWBT"), and Pacific/Nevada.

[5] *See* Amendment of Part 31 (Uniform System of Accounts for Class A and Class B Telephone Companies) to increase the monetary limit where capitalization is appropriate from $25 to $50, *Report and Order,* FCC No. 74-1289, (Released Dec. 5, 1974).

[6] *See* Amendment of the Uniform System of Accounts to increase the dollar limit for expensing minor items, *Report and Order,* FCC No. 81-477, (Released Oct. 16, 1981).

[7] *See* Revision to amend Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies as it relates to the treatment of certain individual items of furniture and equipment costing $500 or less, *Report and Order,* 3 FCC Rcd 4464 (1988).

[8] *Id.* at para 14.

[9] ALLTEL comments, pp. 1-2; Ameritech comments, p. 1; Bell Atlantic comments, p. 1; BellSouth comments, p. 2; Pacific/Nevada comments, p. 2; Roseville comments, p. 2; US West comments, p. 3.

[10] Ameritech comments, p. 1; Pacific/Nevada comments, p. 2; US West comments, p. 2.

[11] Roseville comments, p. 2; Pacific/Nevada comments, p. 2.

tion, the change would not increase rates, nor affect prices of regulated services.[12] Commenters also assert that the proposed change conforms better with generally accepted accounting principles[13] and allows carriers to react more quickly to rapid technological changes.[14] In addition, Bell Atlantic, Pacific/Nevada, and US West support USTA's request that carriers be permitted to amortize the embedded net book value of the undepreciated assets over the remaining life of the accounts. [15] Roseville and US West claim that this would allow the change in the expense limit to be revenue neutral.[16]

7. MCI opposes the petition. It finds no public policy reason for the Commission to grant USTA's petition. MCI questions whether the shifts of the costs to expensing resulting from the proposed rule change would, in fact, be revenue neutral. MCI states that expensing an amount rather than capitalizing it will reduce the sharing[17] obligation that price cap LECs would otherwise incur.[18]

8. In reply comments, USTA asserts that MCI's objections reflect a misunderstanding of USTA's petition. USTA reiterates its view that revenue neutrality will be achieved if the Commission adopts the amortization period requested in the petition. USTA contends that if the Commission grants the petition as proposed, carriers will amortize the embedded net book value over each company's respective remaining life. Thus, the annual amortization expense would equal the depreciation expense that would have been taken if there had been no change in the Commission's Rules.[19] USTA believes that the proposed changes will have a minimal effect, if any, on sharing obligations.[20] Reply comments of SWBT and Pacific/Nevada support the USTA petition.

IV. DISCUSSION

9. Because of inflation, the increased competitive environment, and the rapid technological changes that have occurred since the Commission last changed the expense limit in 1988, we believe that we should reexamine the accounting rules related to the expense limit. We propose, however, to raise the limit to $750 rather than $2000 as suggested by USTA. While generally agreeing in principle that the expense limit should rise, we tentatively conclude that the $2000 cap requested by USTA is excessive. Inflation is one factor to be considered in determining the expense limit; other factors include: the increasingly competitive environment, rapid changes in technology, and the fact that the limit was last changed in 1988. Since 1987, inflation rose from a base 100 to 127.0 in 1994.[21] By this measure, an item costing $500 in 1987 would cost $635 to replace with 1994 dollars. Raising the expense limit to $750 would compensate for inflation over the last seven years and, assuming no significant change in the rate of inflation, would eliminate the need to adjust the cap because of inflation for approximately five years. We also believe that by raising the expense limit above the amount indicated strictly by inflation, we recognize the increasingly competitive environment and the rapid changes in technology.

10. USTA claims that its proposal would be revenue neutral. We believe, however, that USTA's proposal only would be revenue neutral with regard to recovery of the embedded investment, but not for new purchases. If the flexible three to five year amortization period, as proposed by USTA, equals the prescribed depreciable lives of the embedded investment, which is not always the case, there will be no increase in the revenue requirement associated with the embedded investment. The amount of expense will increase, however, due to new purchases that would have been capitalized that would instead be immediately expensed. We seek comments on USTA's proposal, as well as on suggestions for alternative means of treating the net book balance in the embedded assets that are not yet fully depreciated.

11. In our Price Cap Performance Review for Local Exchange Carriers, *First Report and Order*, the Commission stated that where there is an accounting cost change, the issue of whether and to what extent that change should be treated as an exogenous cost change under price caps should be addressed in the same rulemaking proceeding.[22] The expense limit change we propose in this NPRM would not require LECs to increase their expenditures; LECs would merely be required to account for purchases costing between $500 and $750 differently, *i.e.*, LECs would expense all of those items under the proposed rule, as opposed to capitalizing those items under the existing rule. We believe that this accounting change does not affect the LECs' cash flow and thus does not represent an economic cost for the LECs. Thus, it appears that this proposed change in the USOA would not be eligible for exogenous treatment under the revised rule in the *LEC P.C. Review Order*. We seek comments on whether our proposed expense limit change is an economic cost and what effect, if any, on cash flow it may have that would qualify this accounting change for exogenous treatment.

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[12] Ameritech comments, p. 2; Bell Atlantic comments, p. 1.
[13] BellSouth comments, p. 2.
[14] Bell Atlantic comments, p. 2.
[15] Bell Atlantic comments, p. 1; Pacific/Nevada comments, p. 4; US West comments, p. 4.
[16] Roseville comments, pp. 2-3; US West comments, p. 4.
[17] For LECs subject to price cap regulation, sharing is a way to ensure that ratepayers share in the benefits the price cap system can produce. For example, if a LEC elects to use a productivity factor of 3.3 percent and its earnings exceed 12.25 percent rate of return, it is required to share 50 percent of the excess earnings with ratepayers. If the LEC's earnings exceed 16.25 percent, it must return 100 percent of excess earnings over the 16.25 percent level to ratepayers. If the expense limit is increased, as we propose, more items will be expensed rather than capitalized and total expenses will increase. Any increase in a price cap LEC's expenses results in a lower rate of return which could result in a reduced sharing obligation. See *Second Report and Order*, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd 6786, 6801-02, paras. 120-29 (1990).
[18] MCI comments, pp. 1-2.
[19] USTA Reply Comments, p. 3.
[20] Id.
[21] GDP-Implicit Price Deflator. Source: Dept. of Commerce, Survey of Current Business.
[22] *See* Price Cap Performance Review for Local Exchange Carriers, *First Report and Order*, FCC 95-132 (Released Apr. 7, 1995). (*"LEC P.C. Review Order"*)

V. CONCLUSION

12. Upon consideration of the USTA petition and comments and reply comments thereon, we propose to amend Part 32 of our Rules to increase to $750 the limit that governs when certain assets may be expensed rather than capitalized, as detailed in Appendix A. In this notice we seek comments on the proposed amendment. We also seek comments on USTA's proposal to permit carriers to amortize net investment of embedded plant in accounts covered by the proposed rule changes over each company's remaining asset lives for each of those accounts.

VI. PROCEDURAL MATTERS

13. *Ex Parte Rules* - Non Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, provided that they are disclosed as provided in Commission Rules, except during the Sunshine Agenda period. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.106(a).

14. *Regulatory Flexibility Act.* We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Carriers providing interstate services affected by the proposed rule amendment generally are large corporations or affiliates of such corporations. Moreover, because of the nature of local exchange and access service, the Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not "small entities" as defined by that Act.[23] The Secretary shall send a copy of this NPRM, including certification, to the Chief, Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 stat. 1164, 5 U.S.C. Section 601 *et seq* (1981).

15. *Comment Dates.* Pursuant to applicable procedures set forth in Sections 1.414 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.414 and 1.419, interested parties may file comments on or before **July 24, 1995,** and reply comments on or before **August 8, 1995**. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Parties should file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Service, Room 140, 2100 M Street, N.W. Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

16. For further information on this proceeding, contact the Accounting Systems Branch, Accounting and Audits Division, F.C.C., Room 812, 2000 L St., N.W., Washington, D.C. 20554, (202) 418-0810.

VII. ORDERING CLAUSE

17. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 4(j) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 220, NOTICE IS HEREBY GIVEN of the proposed amendment to Part 32 of the Commission's rules, 47 C.F.R. Part 32, as described in this Notice of Proposed Rulemaking. In conjunction with this notice, we delegate authority to the Chief, Common Carrier Bureau to request and obtain from the Regional Bell Operating Companies and GTE any data necessary to evaluate the possible revenue requirement impact of the proposed change.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

47 CFR, Part 32 is proposed to be amended as follows:

Part 32 - Uniform System of Accounts for Telecommunications Companies

1. The authority citation for Part 32 continues to read as follows:

Authority: secs. 4(i), 4(j) and 220 as amended; 47 U.S.C. 154(i), 154(j) and 220 unless otherwise noted.

2. Paragraph 32.2000(a)(4) is revised to read as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

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(a) ***

(4) The cost of individual items of equipment, classifiable to Accounts 2112, Motor Vehicles; 2113, Aircraft; 2114, Special Purpose Vehicles; 2115, Garage Work Equipment; 2116, Other Work Equipment; 2122, Furniture; 2123, Office Equipment; and 2124, General Purpose Computers, costing $750 or less or having a useful life less than one year shall be charged to the applicable Plant Specific Operating Expense accounts. If the aggregate investment in the items is relatively large at the time of acquisition, such amounts shall be maintained in an applicable material and supplies account until items are used.

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[23] See MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-71

In the Matter of

Amendment of Section 73.202(b)	RM-8632
Table of Allotments,	
FM Broadcast Stations.	
(Pasco, Washington)	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 17, 1995; Released: June 1, 1995

Comment Date: July 24, 1995
Reply Comment Date: August 8, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Martin L. Gibbs ("petitioner"), proposing the allotment of Channel 229A at Pasco, Washington, as the community's third local commercial FM service. Petitioner states his intention to apply for the channel, if allotted.[1]

2. We believe the public interest would be served by proposing the allotment of Channel 229A at Pasco, Washington, since it could provide the community with an additional FM transmission service. An engineering analysis has determined that Channel 229A can be allotted to Pasco in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) southwest to avoid a short-spacing to Station KDRK-FM, Channel 229C, Spokane, Washington.[2] Since Pasco is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Pasco, Washington	252A, 267C35	229A, 252A, 267C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **July 24, 1995**, and reply comments on or before **August 8, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Martin L. Gibbs
1708 Road 52
Pasco, Washington 99301
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes,* 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to rectify this omission in his comments.

[2] The coordinates for Channel 229A at Pasco are North Latitude 46-09-37 and West Longitude 119-13-07.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-74

In the Matter of

Amendment of Section 73.202(b), RM-8579
Table of Allotments,
FM Broadcast Stations.
(Benavides and Bruni, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 23, 1995; Released: June 1, 1995

Comment Date: July 24, 1995
Reply Comment Date: August 8, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Benavides Communications ("petitioner"), permittee of Station KXTM(FM), Channel 299C2, Benavides, Texas, requesting the reallotment of Channel 299C2 from Benavides to Bruni, Texas, as the community's first local transmission service, and the modification of Station KXTM(FM)'s construction permit to specify Bruni as its community of license. In addition, petitioner proposes the allotment of Channel 254A to Benavides, Texas. Petitioner states that it will apply for Channel 299C2 at Bruni and Channel 254A at Benavides, Texas.

2. Petitioner seeks modification of Station KXTM(FM) permit pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the licensees and permittees of an existing station to specify a higher class channel and/or a new community of license without affording other interested parties an opportunity to file competing expressions of interest.[1] Petitioner advises that the requested reallotment to Bruni is mutually exclusive with the existing allotment of Channel 299C2 at Benavides. Petitioner asserts that the adoption of its proposal will result in a preferential arrangement of allotments by bringing a first local aural transmission service to Bruni and would not deprive Benavides of its sole "existing" local service. Petitioner states that the Commission has noted that, for the purpose of change of community rule makings, unconstructed permits are not considered to be an "existing service", citing *Change of Community MO&O*, 5 FCC Rcd at 7097; and *see also Farmington and Gallup, New Mexico*, 7 FCC Rcd 2382, 2383 (1992). It argues that since Station KXTM(FM) has never been on the air, there can be no existing service lost. [2] In addition, petitioner states that the reallotment of Channel 299C2 to Bruni would allow the allotment of Channel 254A to Benavides, thereby permitting Benavides to maintain a local FM service.

3. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. Our initial analysis of petitioner's proposal indicates that while it would provide a first local aural transmission service to Bruni and a new allotment at Benavides, petitioner has failed to advance any evidence indicating that Bruni is a community for allotment purposes. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status.[3] Bruni is not incorporated nor is it listed in the U.S. Census. In light of Bruni's lack of inclusion in the U.S. Census, we are not convinced that adoption of petitioner's proposal would further the policy goals of Section 307(b) and the allotment priorities and policies.[4] Therefore, petitioner should present the Commission with sufficient information to demonstrate that Bruni is incorporated, or that it has social, economic, cultural, or governmental indicia to qualify it as a "community" for allotment purposes.[5]

4. As a justification for its proposed change of community, petitioner states that the public interest would be served by the reallotment of Channel 299C2 from Benavides to Bruni, since it would provide Bruni with its first local aural transmission service. However, we are concerned that a loss of potential service to segment of Benavides could occur, as petitioner seeks to replace a Class C2 station at Benavides with a Class A facility. Therefore, we request petitioner to submit information regarding any loss of potential service that would result from this proposal to those persons located within the proposed service area of Station KXTM(FM), Channel 299C2, Benavides, Texas. We also request information as to the extent that this potential loss area could eventually be compensated by the allotment of Channel 254A to Benavides. Since petitioner seeks to relocate its transmitter, we request that it provide information showing the areas and populations which will receive new service and the areas and populations which will lose potential service if

[1] *See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990).

[2] Petitioner notes that KXTM(FM)'s construction permit was not granted as a result of a comparative hearing, thus there is no requirement that the station must operate at Benavides for at least one year before seeking a change in community.

[3] We note that Bruni is listed in the 1994 Rand McNally Commercial Atlas and attributed with a population of 375 persons. However, mere geographical location is not sufficient to establish "community" status. *See, Vimville, Mississippi*, 48 FR 5974 (1983), *Hannibal, Ohio*, 6 FCC Rcd 2144 (1991), and *Columbia, California*, 56 FR 26357 (1991), 6 FCC Rcd 3292 (1991).

[4] The FM priorities are (1) first aural service, (2) second aural service, (3) first local, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

[5] *See, e.g., Beaver Springs, Pennsylvania*, 4 FCC Rcd 5373 (1989), *Sargent, Nebraska*, 4 FCC Rcd 3933 (1989), *Bartow, Georgia, et al.*, 4 FCC Rcd 6876 (1989), *East Hemet, California, et al.*, 4 FCC Rcd 7895 (1989), and *Ellwood, California*, 50 Fed. Ref. 13031, published, April 2, 1985.

Channel 299C2 is reallotted to Bruni. The study should also indicate the number of reception services which are now available within the gain and loss areas. Assuming that Bruni is found to be a community for allotment purposes, petitioner needs to provide information as to the overall public interest benefits that would be advanced from the grant of this proposal.

5. Channel 299C2 can be reallotted from Benavides, Texas, to Bruni, Texas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[6] Channel 254A can be allotted to Benavides with a site restriction of 11.8 kilometers (7.3 miles) south to accommodate petitioner's desired transmitter site.[7] As requested, we also propose to modify petitioner's construction permit for Station KXTM(FM) to specify Bruni as the station's community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept expressions of interest in the use of Channel 299C2 at Bruni or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. Since Bruni and Benavides are located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been requested.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Benavides, Texas	299C2	254A
Bruni, Texas	–	299C2

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **July 24, 1995**, and reply comments on or before **August 8, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lee J. Peltzman, Esq.
Suite 200
2000 L Street
Washington, D.C. 20036
(Counsel for petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required*. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures*. The following procedures will govern the consideration of filings in this proceeding.

[6] The coordinates for Channel 299C2 at Bruni are North Latitude 27-25-31 and West Longitude 98-50-21.

[7] The coordinates for Channel 254A at Benavides are North Latitude 27-29-48 and West Longitude 98-26-59.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-73

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Boonville and Fayette, Missouri)	RM-8568

NOTICE OF PROPOSED RULE MAKING

Adopted: May 23, 1995; Released: June 1, 1995

Comment Date: July 24, 1995
Reply Comment Date: August 8, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Big Country of Missouri ("petitioner"), licensee of Station KTLH, Channel 230A, Boonville, Missouri, requesting the substitution of Channel 230C3 for Channel 230A at Boonville. Petitioner also requests the reallotment of Channel 230C3 from Boonville, Missouri, to Fayette, Missouri, and modification of the license for Station KTLH to specify Fayette as its community of license. Petitioner states that it will apply for the channel at Fayette if allotted to the community.

2. Petitioner contends that its request complies with Sections 1.420(g) and (i) of the Commission's Rules, which permits the modification of a station's license to specify a higher class channel and/or a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Petitioner states that the allotment of Channel 230C3 would provide Fayette, a community of 2,888 people,[1] with its first local aural transmission service, whereas Boonville, a community of 7,095 people, would retain Stations KCLR-FM and KWRT-AM. *See Denison and Pilot Point, Texas*, 4 FCC Rcd 3039 (1994).

3. We believe the public interest could be served by the substitution of Channel 230C3 for Channel 230A at Boonville and reallotment of Channel 230C3 from Boonville to Fayette, since it will provide Fayette with its first local FM transmission service and enable Station KTLH to expand its service area. However, since petitioner indicated it intends to relocate its transmitter, there will be areas which will lose existing reception service as well as areas which will gain new reception service. We request that the petitioner provide information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Channel 230C3 is reallotted to Fayette.[2] In addition, the study should also indicate the number of reception services which are now available within the gain and loss areas.

4. Channel 230C3 can be allotted to Fayette, Missouri, in compliance with the Commission's minimum distance separation requirements with a site restriction 19.3 kilometers (12 miles) east of the community.[3] The site restriction will prevent a short spacing to Sation KFKF-FM, Channel 231C, Kansas City, Kansas.

5. In view of the fact that the proposed allotment would provide a first local aural transmission service to Fayette, Missouri, the Commission believes the public interest would be served by soliciting comments on petitioner's proposal to amend the FM Table of allotments, Section 73.202(b) of the Commission's Rules for the communities listed below:

	Channel No.	
City	Present	Proposed
Boonville, Missouri	230A, 257C2	257C2
Fayette, Missouri	—	230C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **July 24, 1995**, and reply comments on or before **August 8, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Frederick A. Polner
Rothman Gordon Foreman & Groudine, P.C.
Third Floor, Grant Building
Pittsburgh, Pennsylvania 15219

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the*

[1] All population figures are from the 1990 census.

[2] "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallotting a channel from one community to another regardless of whether the service removed constitutes transmission service, a reception service, or both." *Modification of FM and TV Authorizations to Specify a New Community of License (Memorandum Opinion and Order)*, 5 FCC Rcd 7094, 7097 (1990).

[3] The coordinates for Channel 230C3 at Fayette are 39-05-00 and 92-28-30.

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PRONTO, THE TELEPHONE COMPANY OF THE AMERICAS — File No. I-T-C-95-080

Application for authority to acquire and operate facilities for service to Sweden.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 23, 1995; Released: June 1, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-95-080 IS GRANTED, and Pronto, the Telephone Company of the Americas (Pronto) is authorized to:

a. acquire on an Indefeasible Right of User (IRU) basis a one-half interest in and operate one E-1 circuit in the CANTAT-3 Cable System;

b. acquire on an IRU basis a one-half interest in and operate one E-1 circuit in the CANUS-1 Cable System;

c. lease and operate any necessary domestic connecting facilities;

d. lease a one-half interest in and operate any necessary overseas connecting facilities; and

e. use said facilities to provide Pronto's regularly authorized services, including switched voice and data and private line services, between the United States and Sweden.

3. IT IS FURTHER ORDERED that neither Pronto nor any persons or companies directly or indirectly controlling or controlled by Pronto, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which Pronto or any persons or companies controlling or controlled by Pronto are parties.

4. IT IS FURTHER ORDERED that our authorization of Pronto to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and Sweden-- that is, private lines which originate in the United States and terminate in Sweden or which originate in Sweden and terminate in the United States. In addition, Pronto may not -- and Pronto' tariff must state that its customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or Sweden end, or both, for the provision of international basic switched services, unless authorized to do so by the Commission upon a finding that Sweden affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order,* 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1992), *petition for reconsideration pending.*

5. IT IS FURTHER ORDERED that applicant shall file copies of any operating agreement it enters into with its foreign correspondent with the Commission within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that this authorization is issued subject to the terms and conditions of any license for the CANUS-1 AEr NPC-1 cable system issued herein under the Act entitled "An Act relating to the landing and operation of submarine cables in the United States," 47 U.S.C. §§ 34-39.

9. IT IS FURTHER ORDERED that the applicant shall file an application pursuant to Section 214 of the Communications Act of 1934, as amended, before adding any circuits or channels of communication for the provision of service via the CANUS-1 Cable System.

10. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

Red Rock Broadcasting, Inc. File No. ARN-880602NE

For a Construction Permit
for a new FM Radio Station
St. George, Utah

MEMORANDUM OPINION AND ORDER

Adopted: May 2, 1995; Released: June 1, 1995

By the Commission:

1. On September 10, 1992, the Commission released a *Memorandum Opinion and Order,* 7 FCC Rcd 5947 (1992) (*"MO&O"*), in which we considered (1) an application for review filed on February 4, 1991, by Red Rock Broadcasting, Inc. ("Red Rock"), an applicant for a construction permit for a new FM broadcast facility at St. George, Utah; (2) an opposition filed on February 19, 1991, by a mutually exclusive applicant, EAR, Inc. ("EAR"); and (3) Red Rock's reply filed on March 1, 1991. Previously, by letter dated December 27, 1990, the Chief, Audio Services Division, Mass Media Bureau ("Bureau"), acting by delegated authority, denied Red Rock's June 15, 1989, petition for reconsideration of the staff's return of Red Rock's application and granted the competing application of EAR. In our *MO&O,* we denied Red Rock's application for review and affirmed the return of the Red Rock application by the staff. Red Rock appealed the Commission's *MO&O* to the United States Court of Appeals for the District of Columbia Circuit. On December 2, 1993, the Court granted a motion for voluntary remand filed by the Commission and remanded this proceeding to the Commission for further consideration.

2. In seeking remand the Commission stated that it was doing so in order to "address more fully arguments made by ... Red Rock regarding the standard applied by the FCC to assess Red Rock's request for a *de minimis* waiver of FM spacing rules and the FCC's basis for denying that request." *Red Rock Broadcasting, Inc. v. FCC,* No. 92-1541, (Motion for Remand of the Record at 1) (D.C. Cir. 1993). We hereby reassess those arguments and affirm our conclusion that the return of Red Rock's application by the staff was proper.

BACKGROUND

3. On June 2, 1988, Red Rock filed its application for a new FM station in St. George, Utah. A preliminary engineering study revealed that Red Rock's proposal violated Section 73.207 of the Commission's Rules because it was 1.2 kilometers short-spaced to an adjacent Class C1 allotment in Kingman, Arizona. At the time relevant to this proceeding, where a short-spaced application was filed with a waiver request, it was Commission policy to evaluate the applicant's request on the merits. *Donovan Burke,* 104 FCC 2d 843, 847 (1986).[1] Red Rock's application contained the appropriate request for waiver of Section 73.207.

ANALYSIS

4. As we noted in *R & L Broadcasters,* 7 FCC Rcd 5551, 5552 (1992):

> Under the spacing policies ... if the actual short-spacing proposal exceeds 1.6 kilometers, the spacing deficiency is generally viewed as not *de minimis* and the applicant is required to make a "threshold showing" with "concrete support, preferably documentary," that: (i) suitable fully-spaced sites were unavailable; and (ii) the proposed site was the least short-spaced of all suitable sites. *Townsend Broadcasting Corp.,* 62 FCC 2d 511, 512 (1976), *see also Kenter [Broadcasting Company],* 62 RR 2d at 1577, n.9. [1986]. If the short-spacing is less than 1.6 kilometers, the spacing is generally considered *de minimis* and the applicant is excused from the threshold showing provided that sufficient public interest considerations support the waiver. *Baltimore Radio Show,* 5 FCC Rcd 3712 (1990).

Red Rock's short-spacing is less than 1.6 kilometers and thus Red Rock need not make a threshold showing. Red Rock, however, still must show that a grant of its waiver request is supported by sufficient public interest considerations.

5. In determining whether to grant a *de minimis* waiver request, we have summarized the public interest factors we will consider as follows:

> (i) the unsuitability of the existing site in technical terms or in terms of a licensee's inability to reach areas containing a significant number of viewers who lack service, a network service, or "independent" service; (ii) the magnitude of the short-spacing created; (iii) the aeronautical and environmental benefits and drawbacks of locating a tower in a particular area; (iv) the concerns, if any, expressed by the licensee(s) to which the short-spacing would result; and (v) the extent to which the licensee obtained its license knowing there were spacing restraints imposed in a rulemaking. *Caloosa Television Corporation,* 3 FCC Rcd 3656 (1988), *on recon.* 4 FCC Rcd 4762 (1989). (Footnote deleted.)

[1] The Commission no longer considers Section 73.207 waivers. *Amendment of part 73 of the Commission's Rules to Permit*

R & L Broadcasters, 7 FCC Rcd at 5553. While we have considered other factors in *de minimis* situations in the past, none of these other factors are present here.[2]

6. Red Rock contends that the Bureau erred in rejecting its waiver request because a grant of Red Rock's application would provide new service to 33,000 inhabitants of the St. George area. The test, however, is not the provision of a new service (every applicant for a new broadcast station would provide a new service), but the provision of service to listeners "who lack service, a network service, or independent service." *Id.* As noted in the *MO&O,* the area Red Rock proposes to serve is already well served. *MO&O* at para. 4.

7. Red Rock further contends that the staff applied the wrong standard in requiring Red Rock to make a "compelling showing" that its proposed service area was either unserved or underserved; according to Red Rock, the staff should have required only a "sufficient" showing. Application for Review, Pp. 8-9, citing *The Baltimore Radio Show,* 5 FCC Rcd 3712 (1990). Even assuming the staff erred in its choice of the word "compelling," we do not believe its discussion, taken as a whole, indicates that it used a higher standard in evaluating Red Rock's showing than was appropriate. We reiterate that the test of service for purposes of obtaining a *de minimis* waiver is whether the proposal will provide service to listeners who currently lack it. A grant of the Red Rock application would not provide such service and therefore Red Rock's showing was insufficient on that count.

8. Moreover, contrary to Red Rock's other contention in support of its waiver – the fact that Station KGMN, to which the Red Rock proposal was short-spaced, neither pursued its upgrade nor complained of the short-spacing – does not constitute a public interest showing which would warrant a grant of Red Rock's waiver request. The concerns of a licensee to which the short-spacing is proposed are considered in evaluating the sufficiency of an applicant's public interest showing. However, where, as here, an applicant has failed to make an affirmative demonstration that a grant of its waiver request would be in the public interest, the absence of opposition to its proposal does not in itself justify a grant.

9. Finally, we reaffirm the *MO&O* 's reasoning in support of its conclusion that the Bureau did not abuse its discretion by accepting, for good cause, EAR's late filed amendment specifying another fully spaced site after the FAA determined that EAR's initial site constituted a hazard to air navigation (*See* discussion at para. 12, *infra),* but refusing to accept Red Rock's untimely curative amendment. In that amendment Red Rock argued that its site was no longer short-spaced because station KGMN(FM) had downgraded its operations. *See MO&O* at note 1 and para. 10. We also note that here, where there is a competing applicant that has fully complied with the Commission's technical rules, it would be unfairly prejudicial to reinstate a properly dismissed application merely because a subsequent allotment proceeding has rendered its short-spacing moot.[3] *See Colorado Radio Corp, v. FCC,* 118 F2d 24, 26 (D.C. Cir. 1941).

10. Although retention of Red Rock's application would give the Commission a choice of applicants, *see* Application for Review, p. 5, this is not one of the public interest factors that the Commission will consider in evaluating waiver requests. *See MO&O,* paragraph 8. With the increase in applications filed in the 1980's the Commission's policy has been to place greater emphasis on providing service to the public in the most efficient and expeditious manner possible. In this regard, our procedures, including the return or dismissal of applications where necessary, were designed to expedite such service in that context. *See Hillebrand Broadcasting, Inc.,* 1 FCC Rcd 419 (1986), wherein we affirmed the dismissal of an application for failure to comply with procedural deadlines. Return of Red Rock's defective application was consistent with this policy as it permitted the grant of a mutually exclusive application without the delay that a hearing would have caused.

11. Red Rock contends that its application should have been designated for hearing because the site specified by its only mutually exclusive competitor, EAR, had become unavailable, citing *Clearlake Broadcasting Co.,* 47 Fed. Reg. 47931 (MM Bur. 1982)(Application for Review, p. 10). Though we explained in paragraph 9 of the *MO&O* that the facts of *Clearlake* are distinguishable from those of the instant case, we wish to emphasize that *Clearlake* is inapposite here. Unlike the case now before us, the issue in *Clearlake* was whether a fully-spaced site, satisfying all Commission rules, was in fact available because the short-spaced applicant questioned whether its competitors' fully-spaced sites complied with the Commission's technical rules. Because of this dispute over the availability of a compliant site, pending resolution of that question, the Commission designated all the applications for hearing.

12. By contrast, in the case before us the availability of a fully-spaced site was irrelevant to the Commission's disposition of Red Rock's waiver request because at the time of filing the site of the other applicant, EAR, indisputably met all of the Commission's technical criteria. Red Rock was accorded an opportunity to make a public interest showing that its application should be granted despite the short-spacing only because the short-spacing was *de minimis.* When Red Rock failed to make the required showing, the staff correctly dismissed its application. Thereafter, when the FAA disapproved EAR's initial site, the Commission, consistent with long standing practice in circumstances where an applicant loses its site due to circumstances beyond its control, permitted EAR to amend its application to specify a new site. *See* discussion at para. 10 of the *MO&O.* That site was also fully-spaced. Nothing

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Short-Spaced FM Station Assignments by Using Directional Antennas, 4 FCC Rcd 1681 (1989), *recon.* granted in part, 6 FCC Rcd 5356 (1991).

[2] These factors have included (i) where operation of an existing facility proposes a radiation hazard to the public and the only suitable site is short-spaced, *Megamedia,* 67 FCC 2d 1527 (1978); (ii) where grant of the waiver would allow provision of the first nighttime aural service to a significant area and population without the necessity of constructing a new tower, *Fort Myers Broadcasting Company,* 77 FCC 2d 863 (1980); and (iii) where denial of the waiver would prohibit construction of the station and thereby deny a first FM service to the community. *Radio Station WKDO,* 37 RR 2d 1485 (B/C Bur. 1976).

[3] To the extent that Red Rock questions the propriety of a grant of the EAR application in light of questions Red Rock raised concerning the availability of EAR's antenna site (Application for Review, Pp. 16-18), these questions were resolved in EAR's favor by staff action of March 29, 1993. (Letter from Larry Eads, Chief, Audio Services Division). Red Rock did not seek review of this action by the staff and that determination is now final.

in *Clearlake* or other Commission precedent indicates that, instead, the Commission should have designated both the Red Rock and EAR applications for hearing.

13. ACCORDINGLY, IT IS ORDERED, That the *Memorandum Opinion and Order* released September 10, 1992, in this proceeding is REAFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

North Carolina CATV Association, Inc.;

and

Time Warner Entertainment Company, L.P., Complainants PA 95-011

v.

Carolina Power and Light Company, Respondent

ORDER

Adopted: May 26, 1995; Released: June 1, 1995

By the Chief, Accounting and Audits Division:

1. On May 9, 1995, the Complainants, North Carolina CATV Association, Inc. and Time Warner Entertainment-Advance/Newhouse Partnership, successor to Time Warner Entertainment Company, L.P., requested the Commission to dismiss the above-captioned proceeding against Carolina Power and Light Company. The Complainants state that the parties have resolved the matters raised in the complaint.

2. Accordingly, IT IS ORDERED pursuant to Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Complainant's request to dismiss IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Kenneth P. Moran
Chief, Accounting and Audits Division

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

UTICA COLLEGE OF SYRACUSE UNIVERSITY
Utica, New York — File No. BPLIF-931228DE

NATIONAL CONFERENCE ON CITIZENSHIP
Deerfield, New York — File No. BPLIF-930128DD

For Construction Permit and License in the Instructional Television Fixed Service on Channels C1-C4.

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 1995; **Released: June 1, 1995**

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Utica College of Syracuse University (Utica) and National Conference on Citizenship (NCOC), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels C1-C4 in the areas of Utica and Deerfield, New York, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). Both applicants are qualified to be ITFS licensees. Utica is an educational institution that is accredited by the Middle States Association of Colleges and Secondary Schools and that is applying to serve the formal educational needs of its own students. NCOC is a nonprofit organization located in Miami, Florida that has submitted the requisite letters of intended use from accredited schools that would use its service and that has documented the establishment of a local programming committee in the community.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523, (Second Report and Order),* 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions, or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels in the same area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. Utica is entitled to four points because it is an educational institution that proposes to serve the formal educational needs of its own students. NCOC, based in Miami, Florida, seeks to serve the Deerfield, New York area. Because its headquarters is not located within the area it proposes to serve, NCOC is not entitled to points for being a local applicant. See *Broken Arrow Public School District #3,* 9 FCC Rcd 5783 (1994).

Accreditation. Utica is entitled to three points for being accredited by the Middle States Association of Colleges and Secondary Schools. Although NCOC proposes to serve accredited schools, a factor which satisfies its basic eligibility, it is not an accredited entity in its own right in the area it proposes to serve, the factor necessary to earning merit points under the accreditation criterion. Therefore, NCOC is not entitled to any points by this measure. See *Broken Arrow Public School District #3, supra.*

[1] A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order,* 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

Four-Channel Limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in its proposed service area. Therefore, each applicant is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a programming "grid." Where the amounts and types of programming proposed in the schedule and in the grid are inconsistent, we will consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. See *Hispanic Information and Telecommunications Network, Inc.*, 7 FCC Rcd 5924 (1992).

Utica's illustrative schedule and programming grid propose an average of 22 hours of formal educational programming per channel per week. Thus, Utica is entitled to one programming merit point. In contrast, NCOC's programming grid proposes an average of 20 hours of formal educational programming per channel per channel per week. However, NCOC's illustrative schedule proposes an average of 24 hours of ITFS programming, all of which is non-formal. Because neither amount reaches the threshold at which merit points are awarded, NCOC is not entitled to any programming merit points.

E- and F- Channel Group Relocation. Neither applicant is the current licensee of an E or F channel seeking to relocate to other channels. Therefore, neither applicant is entitled to the one point for such applicants.

Total. Utica is entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and one point for proposing at least 21 hours of formal educational programming per channel per week, for a total of ten points. NCOC is entitled only to a total of two points for observing the four-channel limitation. Thus, the tentative selectee is Utica.

OTHER MATTERS

5. Utica proposes to lease its excess capacity for non-ITFS use, as permitted by 47 C.F.R. Section 74.931. Utica has submitted a copy of its lease with United Entertainment Systems, one of whose provisions does not comply with the Commission's requirements for such leases. While the lease would not limit Utica's ability to effectuate fully the programming proposal for which it obtained comparative credit, Section 2(c) of the lease provides that the lessor reserves for any expanded ITFS program scheduling need an additional eighteen (18) hours of recapture airtime. This provision is inconsistent with Section 74.931 (e)(2) of the Commission's Rules, which states that an additional 20 hours per week per channel must be reserved for recapture by the ITFS licensee for its ITFS programming. Although inconsistent with our requirements for excess capacity leases, this provision neither reflects on the applicant's basic or comparative qualifications, nor precludes a grant of an authorization. Nevertheless, Utica's authorization will be conditioned upon conformity of the lease to Commission requirements.

6. No petitions to deny or informal objections have been filed against Utica's application, and we find Utica fully qualified to be an ITFS licensee. We also conclude that grant of Utica's application would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, That the application of National Conference on Citizenship (BPLIF-930128DD) IS DENIED, and the application of Utica College of Syracuse University (BPLIF-931228DE) IS GRANTED, subject to the following:

> This authorization is subject to the condition that within 30 days of the release of this Order, Utica shall submit to the Chief, Distribution Services Branch for approval, information demonstrating compliance with Commission requirements, including, if appropriate, an amended lease agreement conforming in the manner discussed herein.

8. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

MORRIS SCHOOL DISTRICT
Warner, Oklahoma — File No. BPLIF-920713DD

PORUM PUBLIC SCHOOLS
Warner, Oklahoma — File No. BPLIF-930416DZ

For Construction Permit and License
in the Instructional Television
Fixed Service on Channels A3 and A4.

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 1995; Released: June 1, 1995

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Morris School District (Morris) and Porum Public Schools (Porum), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels A3 and A4 in the Warner, Oklahoma area.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). Both applicants are qualified to be ITFS licensees. Morris and Porum are school districts that are accredited by the Oklahoma State Department of Education and that are applying to serve students within their jurisdictions.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523, (Second Report and Order),* 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions, or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism: Both applicants are entitled to four points because they are school districts that propose to serve the formaleducational needs of students enrolled at schools within their jurisdictions.

Accreditation: Both applicants are entitled to three points because they are accredited by the Oklahoma State Department of Education.

Four-Channel Limitation: Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in the proposed service area. Therefore, each applicant is entitled to two points for remaining within the four-channel limitation.

Instructional Programming: ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a programming "grid." Morris' illustrative schedule and grid propose an average of 24.375 hours of formal educational programming per channel per week. Thus, Morris is entitled to one programming merit point. In contrast, Porum's illustrative schedule and grid propose an average of 20 hours of formal educational programming per channel per week. Because the amount of programming proposed does not reach the threshold amount at which merit points are awarded, Porum is entitled to no programming merit points.

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[1] A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order,* 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or at least 41 hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

E- and F- Channel Group Relocation: Neither applicant is the current licensee of an E or F channel seeking to relocate to other channels. Therefore, neither applicant is entitled to the one point for such applicants.

Total: Morris is entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and one point for proposing at least 21 hours of formal educational programming per channel per week, for a total of ten points. Porum is entitled to four points for being local, three points for being accredited and two points for observing the four-channel limitation, for a total of nine points. Thus, the tentative selectee is Morris.

OTHER MATTERS

5. Morris proposes to lease its excess capacity for non-ITFS use, as permitted by 47 C.F.R. Section 74.931. Morris has submitted a copy of its lease with Rural Vision Central Inc., which conforms in all respects with our requirements.

6. No petitions to deny or informal objections have been filed against Morris' application and we find Morris fully qualified to be an ITFS licensee. We also conclude that grant of Morris' application would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, That the application of Porum Public Schools (BPLIF-930416DZ) IS DENIED, and the application of Morris School District (BPLIF-920713DD) IS GRANTED.

8. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 94-97

In the Matter of

United and Central Telephone Companies
Revisions to Tariff F.C.C. No. 1

Transmittal No. 32

ORDER

Adopted: March 28, 1995; Released: March 30, 1995

By the Deputy Chief, Tariff Division, Common Carrier Bureau:

1. On February 17, 1995, United and Central Telephone Companies (United) filed Transmittal No. 32 to revise its Tariff F.C.C. No. 1. Transmittal No. 32, which is scheduled to become effective on April 3, 1995, would add, *inter alia*, a new rate element to recover the costs of security escorts for virtual collocation. No petitions were filed against the United transmittal.

2. The transmittal filed by United raises the same issues as the permanent virtual collocation tariffs that were suspended for one day and made subject to the investigation initiated in the *Virtual Collocation Tariff Suspension Order*.[1] Therefore, the above-captioned transmittal is suspended for one day, until April 4, 1995, and will be subject to the investigation initiated in the *Virtual Collocation Tariff Suspension Order*. This transmittal will also be subject to an accounting order to facilitate any refunds that may later prove necessary.

3. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revision to United and Central Telephone Companies' Tariff F.C.C. No. 1, Transmittal No. 32, IS SUSPENDED for one day and an investigation of the referenced tariff transmittal IS INSTITUTED.

4. IT IS FURTHER ORDERED that United and Central Telephone Companies SHALL FILE tariff revisions within five business days of the release date of this Order to reflect this suspension.

5. IT IS FURTHER ORDERED that, for these purposes, we waive Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59. United and Central Telephone Companies should cite the "DA" number of the instant Order as the authority for this filing.

6. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), United and Central Telephone Companies shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

FEDERAL COMMUNICATIONS COMMISSION

David A. Nall
Deputy Chief, Tariff Division
Common Carrier Bureau

[1] Ameritech Operating Companies *et al.*, CC Docket No. 94-97, Order, DA 94-1421, 10 FCC Rcd 1960 (1994) (*Virtual Collocation Tariff Suspension Order*). The *Virtual Collocation Tariff Suspension Order* suspended for one day, imposed an accounting order, and initiated an investigation of the permanent virtual collocation tariffs filed on September 1, 1994 by the Tier 1 local exchange carriers subject to expanded interconnection requirements. In the *Phase I Designation Order*, the Bureau designated issues for investigation regarding the overhead loadings in the LECs' virtual collocation tariffs, and Bell Atlantic's maintenance-related charges. Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Order Designating Issues for Investigation, DA 95-374 (released February 28, 1995) (*Phase I Designation Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of	RM-8608
Section 15.247 of the	RM-8609
Commission's Rules on Spread Spectrum Operations	

ORDER GRANTING ADDITIONAL TIME FOR COMMENTS

Adopted: March 30, 1995; Released: March 30, 1995

By the Office of Engineering and Technology:

1. On March 27, 1995, Telxon filed a motion requesting that the time for filing comments to the Petition for Rule Making (RM-8608) filed by Symbol Technologies, Inc. (Symbol) be extended from March 30, 1995, until April 17, 1995. In its request, Telxon stated that more time is needed for consideration of the complex technical issues raised in the petition.

2. On March 29, 1995, Symbol requested that the time for filing comments to the Petition for Rule Making (RM-8609) filed by SpectraLink Corporation be extended by the same amount of time provided for the Symbol petition. Symbol indicated that the two petitions address a common problem and propose similar solutions. Thus, keeping them on the same schedule will help to conserve the resources of by the Commission and of interested parties.

3. While the Commission does not routinely grant extensions of time (47 CFR Section 1.46(a)), we recognize that the proposals in these proceedings are highly technical and potentially controversial. Additional comments could allow the Commission to better determine how to address the petitions. For these reasons, we believe that some additional time for comments should be provided. Nevertheless, to minimize any delays in responding to these petitions, we do not believe that the full amount of time requested by Telxon is necessary to provide comments.

4. Accordingly, IT IS ORDERED that the deadline for filing comments in response to RM-8608 and RM-8609 IS EXTENDED to **April 7, 1995**. IT IS ALSO ORDERED that the deadline for filing reply comments IS EXTENDED to **April 24, 1995**. This action is taken pursuant to the authority found in Sections 0.31, 0.241 and 1.46 of the regulations, 47 CFR Sections 0.31, 0.241 and 1.46.

5. For further information, contact John Reed, Office of Engineering and Technology, (202) 776-1627.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Office of Engineering and Technology

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Comcast Cablevision of West Florida, Inc. Venice, Florida — CUID No. FL0052

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 1995; Released: April 6, 1995

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. Here we consider a complaint about the price Comcast Cablevision of West Florida, Inc. ("Comcast") was charging for its cable programming service ("CPS") tier in Venice, Florida, CUID No. FL0052. Comcast has attempted to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Comcast's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

PROCEDURAL MATTERS

4. The first valid CPS complaint was completed and served on Comcast on November 9, 1993. The Commission received the complaint on November 15, 1993.

5. Comcast attempted to justify its CPS price through an FCC Form 393 filed on December 10, 1993. Comcast amended its justification on June 27, 1994 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally.[11] Comcast further amended and supplemented its filings on February 7, 1995 in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[12]

DISCUSSION

6. In its amended benchmark filing of February 7, 1995 Comcast calculated a maximum permitted price for the CPS tier of $12.69 per month. Upon review, we have found no apparent errors that would require a recalculation of the maximum permitted price. However, Comcast's actual price for the CPS tier was $12.70 per month. Thus, Comcast has failed to demonstrate that its price for the CPS tier was not unreasonable.

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Comcast has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Comcast implemented its CPS price under the new regulations. See para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Comcast's price for the period after May 14, 1994 may be required to reflect the fact that Comcast's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. 47 C.F.R. §76.922(b)(4)(c).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration* at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration* at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

CONCLUSIONS

7. Upon review of the record herein, we conclude that Comcast's showing supports a maximum reasonable CPS tier price of $12.69 per month (plus franchise fee) for the period November 15, 1993 to May 14, 1994.[13] However, we further determine that the refund at issue is such a de minimis amount that it would not serve the public interest to order a refund.

8. We further conclude that Comcast must reflect in its FCC Form 1200 rate filing for the period after May 14, 1994 the fact that Comcast's price during the earlier period was unreasonable. We reserve the right to make further adjustments to Comcast's prices for the period after May 14, 1994 upon completion of our review of Comcast's FCC Form 1200 rate filing.

9. We further conclude that Comcast has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[14] As provided in the Public Notice, we will relieve Comcast of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

10. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the November 15, 1993 complaint against the cable programming service price charged by Comcast Cablevision of West Florida, Inc., in Venice, Florida, CUID No. FL0052, IS GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED TO THE EXTENT INDICATED HEREIN.

11. IT IS FURTHER ORDERED that the benchmark filing submitted by Comcast Cablevision of West Florida, Inc. with respect to Venice, Florida, CUID No. FL0052, for the period of November 15, 1993 to May 14, 1994, justifies a maximum price of $12.69 per month (plus franchise fee) for the cable programming service tier.

12. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(c) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(c), that Comcast Cablevision of West Florida, Inc. shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to Venice, Florida, CUID No. FL0052, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted rate (plus franchise fee).

13. IT IS FURTHER ORDERED that Comcast Cablevision of West Florida, Inc. shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a CPS tier price that reflects the reduction in the CPS rate determined in this Order.

14. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that Comcast shall not be required to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[13] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[14] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN CABLE SYSTEMS OF CALIFORNIA, INC. D/B/A CONTINENTAL CABLEVISION — CSR-4482-R

Petition for Special Relief

Motion of DIRECTV, Inc. for Extension of Time to File Response

ORDER

Adopted: March 31, 1995; Released: March 31, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On March 23, 1995, DIRECTV, Inc. ("DIRECTV") timely filed a Motion for Extension of Time to File Response to a Petition for Special Relief ("Petition") previously submitted by American Cable Systems of California, Inc. d/b/a Continental Cablevision ("Continental"). In the Petition, Continental has requested that the Commission exempt from regulation the rates Continental charges for cable programming services provided to subscribers in Franchise Area I of the City of Los Angeles. Pursuant to our March 14 Public Notice in this matter, responses to the Petition currently are due April 3, 1995. DIRECTV requests a 20-day extension in which to file its response.

2. In requesting the extension, DIRECTV points to the novel issues raised in the Petition. Continental bases its Petition in large part upon a previous Bureau order in a separate matter, in which we observed:

> [I]n the case of cable programming service tiers ("CPSTs") there may be circumstances where a cable system, although not subject to effective competition as defined in the [Cable Television Consumer Protection and Competition Act of 1992],[1] may be charging cable rates that are constrained by the presence of one or more multichannel video programming distributors ("MVPD") in the franchise area. In such situations, the presence of one or more MVPDs may ensure that the rates the operator charges subscribers for CPSTs are not "unreasonable." In such instances, the public interest may be served by relying on the market forces instead of our rate rules to ensure that the operator's rates are not "unreasonable."[2]

3. We invited cable operators to file petitions for special relief from rate regulation if they believed they could satisfy this standard.[3] Continental is the first and only operator to have sought such relief.

4. DIRECTV claims that it needs a 20-day extension in which to fully analyze and address all of the issues raised by the Petition. In seeking an extension, DIRECTV also refers to the potentially far-reaching implications of our disposition of the Petition. In addition, DIRECTV, a provider of direct broadcast satellite ("DBS") service, notes that it is identified in the Petition as a MVPD whose presence allegedly ensures that Continental's CPST rates are not unreasonable. DIRECTV thus claims that it is an "interested person" upon whom Continental was required to, but did not, serve the Petition.[4]

II. STANDARD OF REVIEW

5. As set forth in Section 1.46(a) of our rules: "It is the policy of the Commission that extensions of time shall not be routinely granted."[5] However, any provision of our rules "may be waived by the Commission on its own motion or on petition if good cause therefor is shown."[6]

III. DISCUSSION

6. We find good cause to grant DIRECTV's motion in part. The Petition filed by Continental raises significant issues. We believe the public interest will be served by allowing additional time for DIRECTV to address these issues. Whether or not DIRECTV qualifies as an interested person under Section 76.7(b) of our rules, we believe that DIRECTV has a unique perspective on the issues raised by the Petition and trust that its comments will aid us in our resolution of Continental's request for special relief. Moreover, because these are issues of first impression, our resolution of the Petition will provide guidance to other cable operators that are considering seeking similar relief. Thus, it is especially important that we take all reasonable steps to ensure that our decision is based on a complete record.

7. Although we find good cause to permit an extension, we decline to grant the full 20-day extension requested by DIRECTV. A prompt resolution of the Petition also serves the public interest. Therefore, we will extend the due date for responses to the Petition until April 21, 1995. For purposes of convenience and simplicity, this deadline will apply to all parties wishing to comment on the Petition. The new deadline for Continental's reply shall be May 1, 1995.[7]

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[1] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"). Under the 1992 Cable Act, the Commission's rate rules apply to all cable operators except those subject to effective competition. Communications Act of 1934, as amended ("Communications Act"), §623(a)(2), 47 U.S.C. §543(a)(2). *See* Communications Act, §623(l)(1), 47 U.S.C. §543(l)(1) (definition of "effective competition").

[2] *Tel-Com, Inc.*, DA 95-85 (rel. January 20, 1995) at ¶ 10.

[3] *Id.*

[4] *See* 47 C.F.R. §76.7(b) (requiring service of a petition for special relief upon any "interested person who may be directly affected if the relief requested is granted").

[5] 47 C.F.R. §1.46(a).

[6] 47 C.F.R. §1.3.

[7] We note that on March 24, 1995, the Bureau issued a written request to Continental for additional information concerning

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that the Motion for Extension of Time to File Response is GRANTED IN PART.

9. IT IS FURTHER ORDERED that DIRECTV and all other parties may submit comments or oppositions to the Petition on or before **April 21, 1995** and that Continental may file a reply to any such comments or oppositions on or before **May 1, 1995**. All such pleadings should reference the file number noted above. Copies of submissions must be served on the petitioner and all persons listed in petitioner's certificate of service and must contain a detailed full showing, supported by affidavit, of any facts or considerations relied on.

10. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules. 47 C.F.R. §0.321.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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the grounds for its the Petition. As set forth in the request, Continental must file its responses no later than April 13, 1995. That deadline is not affected by this Order.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 31, 1995

Released: March 31, 1995

VIA FACSIMILE AND FIRST CLASS U.S. MAIL

Arthur H. Harding, Esq.
Fleishman and Walsh, L.L.P.
1400 Sixteenth Street, NW
Washington, DC 20036

Re: FCC Form 1210 rate increases for Paragon Cable Manhattan, CUID No. NY0104

Dear Mr. Harding:

On March 10, 1995, Paragon Cable Manhattan ("Paragon") filed with the Cable Services Bureau a request for approval, on an expedited basis, of a proposed rate increase to its cable programming service (CPS) tier as computed on FCC Form 1210. Paragon states that the increase is necessary to allow it to provide its subscribers with new programming. Because we found Paragon's rates to be unreasonable, obligating it to pay refunds to its CPS subscribers,[1] Paragon must obtain the Bureau's approval before it may increase its CPS tier rate. *See* FCC Form 1210, page 2.[2] This requirement allows us to monitor subsequent rate increases, once we have found rates unreasonable. Paragon states that the proposed programming and external cost increases are not dependent on the issues involved in the Bureau's Order imposing refund liabilities, and that approval should not be delayed on that account.

To date, we have undertaken a full review of Paragon's rates only for the period prior to May 15, 1994, and have found those rates unreasonable. Our review of the reasonableness of Paragon's rates from May 15, 1994 to the present is currently underway. Paragon's current request for approval of FCC Form 1210 is for expenses incurred in the fourth quarter of 1994, and programming expenses to be accrued upon our approval.

We have reviewed the Form 1210 filing before us, and find no patent defects. We believe that the impetus behind Paragon's request is to provide its subscribers with new programming in the above-noted community, and that approval of Paragon's instant request will encourage this development. Our permitting the requested increases is on an interim basis only, and is subject to our determination of the reasonableness of Paragon's CPS rates for the period beginning May 15, 1994, including subsequent changes to the rates filed on Paragon's FCC Form 1200. Thus, although we allow the requested increase for new programming, the increased rate which Paragon may charge is potentially subject to refund if our review of its FCC Form 1200 and Form 1210 filings finds that Paragon's underlying CPS rate is unreasonable.

Sincerely,

Meredith J. Jones
Chief, Cable Services Bureau

[1] *See* Order, DA 95-250 (Cab. Serv. Bur., released Feb. 17, 1995).

[2] We note Paragon's argument that it submitted a supplemental filing in response to the Bureau's Public Notice of December 29 and should therefore be excused from the requirement of prior approval for a rate increase, but we reject that approach, and note that Paragon's filing in February 1995 concerned franchise areas other than the one in question here.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 31, 1995

Released: March 31, 1995

Seth Davidson, Esq.
Fleishman and Walsh, L.L.
1400 16th Street, NW
Washington, DC 20036

Re: FCC Form 1210 rate increases for Meredith Cable Television in Minnesota

Dear Mr. Davidson:

On March 6, 1995, Meredith Cable Television ("Meredith") filed with the Cable Services Bureau a request for approval, on an expedited basis, of a proposed rate increase to its cable programming service (CPS) tier in various Minnesota communities, as computed on FCC Form 1210. In this request, Meredith states that the increase is necessary in order to minimize subscriber confusion. Because we found Meredith's CPS rates in these communities unreasonable, obligating it to pay refunds to its CPS subscribers,[1] Meredith must obtain the Bureau's approval before it may increase its CPS tier rate. *See* FCC Form 1210, page 2. This requirement allows us to monitor subsequent rate increases, once we have found rates unreasonable. Meredith states that it had notified relevant franchising authorities, prior to the release of the Bureau's order, of its intention to increase CPS rates effective April 1, 1995, and thus requests expedited approval of its filings.

To date, we have undertaken a full review of Meredith's rates only for the period prior to May 15, 1994, and have found those rates unreasonable. Our review of the reasonableness of Meredith's rates from May 15, 1994 to the present is currently underway. Meredith's current request for approval of FCC Form 1210 is for expenses incurred in the fourth quarter of 1994. We have reviewed the Form 1210 filings before us, and find no patent defects. We believe that the impetus behind Meredith's request is to provide its subscribers with new programming in the above-noted communities, and that approval of Meredith's instant request will encourage this development. Our permitting the requested increases is on an interim basis only, and is subject to our determination of the reasonableness of Meredith's CPS rates for the period beginning May 15, 1994, including subsequent changes to the rates filed on Meredith's FCC Form 1200. Thus, although we allow the requested increase for new programming, the increased rate which Meredith may charge is potentially subject to refund if our review of its FCC Form 1200 and Form 1210 filings finds that Meredith's underlying CPS rate is unreasonable.

Sincerely,

Meredith J. Jones
Chief, Cable Services Bureau

[1] *See* Meredith Cable Television, Memorandum Opinion and Orders, DA 95-319 and DA 95-320 (Cab. Serv. Bur.) released Feb. 23, 1995.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 31, 1995

Released: March 31, 1995

VIA FACSIMILE AND FIRST CLASS U.S. MAIL

Peter H. Feinberg, Esq.
Dow, Lohnes & Albertson
1255 23rd Street, NW
Washington, DC 20037-1194

Re: FCC Form 1210 rate increases for Comcast Cablevision of Tallahassee, Inc., CUID No. FL0033

Dear Mr. Feinberg:

On March 14, 1995, Comast Cablevision of Tallahassee, Inc. ("Comcast") filed with the Cable Services Bureau a request for approval, on an expedited basis, of a proposed rate increase to its cable programming service (CPS) tier as computed on FCC Form 1210. In this request, Comcast states that the increase is necessary to allow Comcast to provide its subscribers with new programming. Because we found Comcast's rates to be unreasonable, obligating it to pay refunds to its CPS subscribers,[1] Comcast must obtain the Bureau's approval before it may increase its CPS tier rate. *See* FCC Form 1210, page 2. This requirement allows us to monitor subsequent rate increases, once we have found rates unreasonable. Comcast states that the proposed programming and external cost increases are not dependent on the issues involved in the Bureau's Order imposing refund liabilities, and that approval should not be delayed on that account.

To date, we have undertaken a full review of Comcast's rates only for the period prior to May 15, 1994, and have found those rates unreasonable. Our review of the reasonableness of Comcast's rates from May 15, 1994 to the present is currently underway. With respect to rates charged for the period beginning May 15, 1994, Comcast has filed FCC Forms 1200 and 1205. Comcast's current request for approval of FCC Form 1210 is for expenses incurred in the fourth quarter of 1994, and programming expenses to be accrued upon our approval.

We have reviewed the Form 1210 filings before us, and find no patent defects. We believe that the impetus behind Comcast's request is to provide its subscribers with new programming in the above-noted communities, and that approval of Comcast's instant request will encourage this development. Our permitting the requested increases is on an interim basis only, and is subject to our determination of the reasonableness of Comcast's CPS rates for the period beginning May 15, 1994, including subsequent changes to the rates filed on Comcast's FCC Form 1200. Thus, although we allow the requested increase for new programming, the increased rate which Comcast may charge is potentially subject to refund if our review of Comcast's FCC Form 1200 and Form 1210 filings finds that Comcast's underlying CPS rate is unreasonable.

Sincerely,

Meredith J. Jones
Chief, Cable Services Bureau

[1] *See* Order, DA 94-1480 (Cab. Serv. Bur., released Dec. 13, 1994).

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 31, 1995

Released: March 31, 1995

VIA FACSIMILE AND FIRST CLASS U.S. MAIL

Peter H. Feinberg, Esq.
Dow, Lohnes & Albertson
1255 23rd Street, NW
Washington, DC 20037-1194

Re: FCC Form 1210 rate increases for Cox Cable Hampton Roads, Inc., CUID No. VA0166

Dear Mr. Feinberg:

On March 8, 1995, Cox Cable Hampton Roads, Inc. ("Cox") filed with the Cable Services Bureau a request for approval, on an expedited basis, of a proposed rate increase to its cable programming service (CPS) tier as computed on FCC Form 1210. In this request, Cox states that the increase is necessary to allow Cox to provide its subscribers with new programming. Because we found Cox's rates to be unreasonable, obligating it to pay refunds to its CPS subscribers,[1] Cox must obtain the Bureau's approval before it may increase its CPS tier rate. *See* FCC Form 1210, page 2. This requirement allows us to monitor subsequent rate increases, once we have found rates unreasonable. Cox states that the proposed programming and external cost increases are not dependent on the issues involved in the Bureau's Order imposing refund liabilities, and that approval should not be delayed on that account.

To date, we have undertaken a full review of Cox's rates only for the period prior to May 15, 1994, and have found those rates unreasonable. Our review of the reasonableness of Cox's rates from May 15, 1994 to the present is currently underway. With respect to rates charged for the period beginning May 15, 1994, Cox has filed FCC Forms 1200 and1205. Cox's current request for approval of FCC Form 1210 is for expenses incurred in the fourth quarter of 1994, and programming expenses to be accrued upon our approval.

We have reviewed the Form 1210 filings before us, and find no patent defects. We believe that the impetus behind Cox's request is to provide its subscribers with new programming in the above-noted communities, and that approval of Cox's instant request will encourage this development. Our permitting the requested increases is on an interim basis only, and is subject to our determination of the reasonableness of Cox's CPS rates for the period beginning May 15, 1994, including subsequent changes to the rates filed on Cox's FCC Form 1200. Thus, although we allow the requested increase for new programming, the increased rate which Cox may charge is potentially subject to refund if our review of Cox's FCC Form 1200 and Form 1210 filings finds that Cox's underlying CPS rate is unreasonable.

Sincerely,

Meredith J. Jones
Chief, Cable Services Bureau

[1] *See* Order, DA 94-1288 (Cab. Serv. Bur., released Nov. 18, 1994).

Before the
Federal Communications Commission
Washington, D.C. 20554

RAO LETTER 25
March 31, 1995

IN REPLY REFER TO:
RAO Letter 25
DA 95-703

Adopted: March 31, 1995; Released: April 3, 1995

Responsible Accounting Officer:

Re: Accounting and Reporting Requirements for Video Dialtone Service

I. INTRODUCTION

This letter provides guidance on video dialtone accounting to local exchange carriers ("LECs") that receive Section 214 authorizations to provide video dialtone service.[1] It sets forth specific guidance on the requirements for accounting classifications, subsidiary records, and amendments to cost allocation manuals ("CAMs") for LECs that provide video dialtone service. [2]

II. BACKGROUND

In 1991 and 1992, the Commission adopted policies and rules to permit LECs to assume an expanded role in the provision of video services in their telephone service areas.[3] In its 1991 and 1992 Orders, the Commission established a regulatory framework for telephone companies to provide video service on a common carrier basis and provide various related nonregulated services consistent with the cross-ownership restrictions imposed by the Cable Communications Policy Act of 1984 ("1984 Cable Act").[4] This regulatory framework is called "video dialtone."

On November 7, 1994, the Commission issued the *Video Dialtone Reconsideration Order* (*"VDT Recon Order"*). In that Order, the Commission reaffirmed its basic video dialtone framework adopted in the *Second Report and Order,* and, among other things, set forth accounting and reporting requirements for LECs that offer video dialtone service. The Commission required carriers offering video dialtone to establish two sets of subsidiary accounting records: one to capture the investment, expense and revenue wholly dedicated to video dialtone; the other to capture the investment, expense and revenue shared between video dialtone and other services.[5] Wholly dedicated refers to investment, expense and revenue related exclusively to providing video dialtone service. Shared refers to investment, expense and revenue related to providing video dialtone and other services on a joint or common basis.[6]

The *VDT Recon Order* requires LECs to file a summary of these subsidiary accounting records with the Commission on a quarterly basis. The Commission delegated authority to the Common Carrier Bureau to define the content and format of both the subsidiary accounting records and the quarterly reports, and to provide accounting guidance where necessary for uniform classification of video dialtone investment, expense and revenue.[7] Finally, the *VDT Recon Order* required LECs to file revisions to their CAMs to reflect the provision of video dialtone service.

III. ACCOUNTING CLASSIFICATION

The Commission did not change its Part 32, Uniform System of Accounts for Telecommunications Companies ("USOA") in the *VDT Recon Order,* but it did require carriers to establish subsidiary accounting records, consistent with that system, in order to isolate video dialtone costs and revenues from other LEC costs and revenues.[8] We therefore require LECs to maintain in subsidiary records, by USOA accounts, all wholly dedicated and shared investment, expense, and revenue related to providing video dialtone service. Finally, consistent with Part 32 of the Commission's rules, Class A companies shall use Class A detail level accounts and Class B companies shall use Class B detail level accounts in recording video dialtone investment, expense and revenue in subsidiary records.[9]

A. Investment Classifications

For accounting classification purposes, video dialtone investment shall include all plant wholly dedicated to video dialtone or shared between video dialtone and other services. Wholly dedicated investment is defined as investment

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[1] This includes video dialtone trials and commercial applications.

[2] LECs with annual operating revenues of $100 million or more are required to file a CAM with the Commission. CAMs contain information regarding the carriers' allocation of costs between regulated and nonregulated activities. *See* 47 C.F.R. § 64.903.

[3] *See* Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54-63.58, Further Notice of Proposed Rulemaking, *First Report and Order and Second Further Notice of Inquiry,* 7 FCC Rcd 300 (1991) (*First Report and Order*), *recon.,* 7 FCC Rcd 5069 (1992), *aff'd,* National Cable Television Association v FCC, No. 91-1649 (D.C. Cir. Aug. 26, 1994) (*NCTA v. FCC);* Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, *Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking,* 7 FCC Rcd 5781 (1992) (*Second Report and Order*), *aff'd, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking,* 10 FCC Rcd 244 (1994) (*"VDT Recon Order"*), *appeal pending sub nom.* Mankato Citizens Telephone Company v. FCC, No. 92-1404 (D.C. Cir. filed September 9, 1992).

[4] Cable Communications Policy Act of 1984, Pub. L. No. 98-549, §613(b), 98 Stat. 2779 (codified at 47 U.S.C. §533(b)).

[5] *VDT Recon Order* at para. 173.

[6] By "other services" we mean telephone and other services provided by LECs.

[7] In this Responsible Accounting Officer ("RAO") Letter, we only address the accounting classifications, format and content requirements for LEC subsidiary records and CAM filing requirements. We plan to address the format and content for LEC video dialtone quarterly reports in a separate notice and comment proceeding.

[8] *VDT Recon Order* at para. 173.

[9] 47 C.F.R. § 32.11.

that is used exclusively for the provision of video dialtone service. Shared investment is defined as investment that is common to, or used jointly to provide video dialtone and other services. Under the *VDT Recon Order,* LECs must separately track both wholly dedicated and shared video dialtone investment. This requirement covers both new investment purchased for the provision of video dialtone and existing plant converted to video dialtone use. To track net investment, subsidiary records must identify, for each plant account, all accumulated depreciation, amortization and deferred income taxes associated with wholly dedicated and shared video dialtone investment.

In addition, the Commission conditioned LEC authorizations to provide video dialtone service on a requirement that LECs keep subsidiary records to identify, by Part 32 plant account, the cost of plant that is replaced or retired due to either the deployment of video dialtone plant or the deployment of fiber optic network upgrades as mandated under state authority in study areas where VDT deployment occurs.[10]

B. Expense Classification

Video dialtone expense shall include all expenses identified with the exclusive or shared provision of video dialtone service. In addition to ongoing expenses incurred in the provision of video dialtone service, these expenses shall include all expenses incurred during the initial development and deployment stages of video dialtone, such as research and development expense and legal services expense.

In order to implement the Commission's requirement that the Common Carrier Bureau ensure that LEC proposed expense allocations and overhead loadings associated with video dialtone tariff filing are reasonable, we will require separate subsidiary records for dedicated and shared video dialtone expenses.[11] Carriers must also separately identify depreciation and amortization expense associated with wholly dedicated and shared video dialtone investment by each Part 32 plant account.

We recognize that some of the expenses that fall into the shared category may be the type of expenses that are tracked by function codes and some may be the type that are not tracked by function codes. Expenses not tracked by function codes are support functions, such as network support, general support, corporate operations and general administrative. Expenses tracked by function codes shall be identified as video dialtone expense using the tracking mechanism.[12] Expenses not tracked by function codes shall be so identified and shall be classified as shared video dialtone expenses. These expenses will be subject to overhead allocation for the video dialtone tariff filing.

IV. SUBSIDIARY ACCOUNTING RECORDS

As required by the *VDT Recon Order,* LECs shall create subsidiary accounting records that identify investment and expense wholly dedicated to video dialtone, or shared between video dialtone and other services.[13] Carriers shall ensure that subsidiary accounting record entries are readily identifiable by account title, account number, subaccount identification, and study area. These records shall also include all initial and ongoing transactions that directly impact investment, expense and revenue accounts. In order to enhance our ability to verify LEC compliance with the Commission's established video dialtone accounting and reporting requirements, carriers shall be required to have internal accounting controls and a complete audit trail for each subsidiary account record. Subsidiary accounting records must be reconcilable with total amounts reported in the Part 32 accounts. In addition, LECs shall maintain these records until such time as the Commission decides otherwise. These requirements do not preclude carriers from creating subaccounts, if necessary, to capture data necessary to provide subsidiary record information.

Consistent with the Commission's requirements on accounting classifications and reporting, carriers shall capture all costs incurred for the provision of video dialtone, including the preliminary planning, and research and development expenses incurred prior to the Commission's approval of Section 214 application. Upon receiving Section 214 authorization from the Commission, carriers must establish subsidiary accounting records and report the results of these records to the Commission on a quarterly basis.

Subsidiary accounting records for investment accounts must include, but shall not be limited to, all telephone plant in service accounts, associated accumulated depreciation, deferred taxes and any associated land and support assets which contain costs related to the provision of video dialtone service. Subsidiary accounting records for video dialtone investment accounts must also identify the investment's location and whether that investment is wholly dedicated to video dialtone or shared between video dialtone and other services. LECs shall maintain subsidiary accounting records so that the content of these records can be traced from the continuing property records ("CPRs") through the accounting system to the general ledger and to the equipment's physical location.

Carriers shall use tracking codes that allow video dialtone expense to be extracted and summarized from the Part 32 USOA expense accounts. Carriers may create tracking codes that are compatible with their existing internal accounting systems. Carriers may use either field reporting

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[10] *See, e.g.,* Application of New Jersey Bell Telephone Company for Authority pursuant to Section 214 of the Communications Act of 1934, 9 FCC Rcd 3677, 3690 at para. 72 (1994).

[11] *VDT Recon Order* at para. 221.

[12] All employees that incur video dialtone costs must employ existing time reporting procedures using some type of function codes. For example, carriers that currently utilize time reporting tracking mechanisms in order to identify regulated and nonregulated activities of support functions, such as legal services, must continue to use similar accounting tracking mechanisms for identifying video dialtone expenses. In addition, expenses incurred or services provided by LEC affiliates for LEC provision of video dialtone service must be identified with unique function codes that indicate video dialtone expense.

[13] In the *VDT Recon Order,* the Commission determined that it was not necessary to make permanent changes to the Commission's USOA for LEC provision of video dialtone. The Commission, however, required that LECs offering video dialtone service create subsidiary records to capture wholly dedicated and shared video dialtone costs. *See VDT Recon Order* at para 173. Under the Commission's rules, subsidiary records categories are defined as "... segregations of certain regulated costs, expenses and revenues which must be maintained and are subject to specific reporting requirements of this Commission." *See* 47 C.F.R. §32.9000.

codes, job function codes, location codes, or any other identification codes that permits such expenses to be audited.

Subsidiary accounting records for expense shall include all plant-specific operations expense, plant-nonspecific operations expense, customer operations expense, and corporate operations expense accounts that contain any costs related to the provision of video dialtone service. Subsidiary accounting records for video dialtone should separately identify revenues from intrastate and interstate tariffs.[14] Carriers shall identify by subsidiary record category any nonregulated video dialtone revenues.

V. COST ALLOCATION MANUAL FILING REQUIREMENTS

LECs offering video dialtone service must amend their CAMs to reflect both their regulated and nonregulated video dialtone service as follows:

LECs are required, pursuant to the *VDT Recon Order,* to amend their CAMs prior to providing nonregulated products or services related to video dialtone.[15] We require carriers that receive Section 214 authorizations to provide video dialtone service to implement these requirements by revising Section II (Nonregulated Activities) of their CAMs to include a detailed description of proposed nonregulated video dialtone services that they seek to provide.

CAM revisions must include a statement indicating whether nonregulated video dialtone service is provided through a stand-alone video dialtone system, or a system shared with telephony. Carriers must also establish a new subsection in Section II of their CAMs that identifies all costs incurred in the planning and development of nonregulated activities provided in conjunction with video dialtone service. LECs that currently include enhanced services planning in their CAMs as a nonregulated activity associated with their provision of telephone service, shall be required to amend their CAMs to specifically identify any planning associated with the provision of nonregulated video dialtone service. In addition, LECs shall amend their existing "Nonregulated Services Matrix"–which shows nonregulated products/services and the USOA accounts associated with these nonregulated products/services–to list each individual USOA account affected by the provision of any nonregulated video dialtone activity.

LECs must also amend Section VI (Cost Apportionment Tables) of their CAMs, so that existing cost allocation tables include apportionment procedures for investment and expense used in the provision of regulated and nonregulated video dialtone service. We require LECs to justify and/or amend, if necessary, their existing cost apportionment methodology and allocators for their provision of video dialtone service. LECs that choose not to modify their cost apportionment methodology or allocators for video dialtone, must also explain why their existing methodology or allocation factors are still valid for their regulated, nonregulated and common cost pools. In addition, because the allocation for nonregulated usage of common network plant is determined by a three-year forecast of investment usage, LECs shall revise their forecast usage allocator to reflect accurately the provision of any nonregulated video dialtone service offered on common network plant. Moreover, carriers that currently do not provide nonregulated services that use common network plant, but "reasonably anticipate" offering such services during the plant's three-year forecast usage period, shall include revised apportionment procedures for the nonregulated usage of network plant in the Section VI, Cost Apportionment Tables.[16]

Finally, we require LECs to amend their CAMs to identify any affiliate transactions related to their provision of video dialtone service. LECs must amend Section V (Affiliate Transactions) of their CAMs by listing all transactions with affiliates that involve video dialtone service. This listing must contain a brief description of the nature, terms and frequency of each transaction. LECs that currently list transactions involving affiliates providing video related services in existing CAMs, must amend such CAMs to indicate which, if any, specific transactions relate to the provision of video dialtone service.

As required by the *VDT Recon Order,* LECs shall file CAM revisions within thirty days after the effective date of their Section 214 authorization and at least sixty days prior to providing nonregulated products or services related to video dialtone.

VI. ACCOUNTING CONSISTENCY/UNIFORMITY ISSUES

In reviewing various LEC Section 214 applications for video dialtone service, we have found certain inconsistencies in the accounting classification of asynchronous transfer mode ("ATM") equipment. LECs have described ATM equipment as providing the basic connection between the various video servers and various destinations. Some LECs have provisionally classified ATM equipment in Account 2212, Digital electronic switching; other LECs have classified the same type of equipment in Account 2232, Circuit equipment. Based on our analysis of video dialtone ATM equipment and LEC descriptions of the functional purpose of such equipment, we find that, although certain carriers have classified ATM equipment as switches, this equipment does not perform the functions performed by traditional network switches. [17] We find based on the data before us, that ATM video dialtone equipment does not, at this stage of LEC video dialtone deployment, meet established criteria for classification as a switch. Therefore, carriers shall classify ATM equipment as circuit equipment and record it in Account 2232, Circuit

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[14] Carriers shall record revenues in Part 32 accounts consistent with the category of video dialtone service set forth in a carrier's tariff provisions. *See* 47 C.F.R. §32.4999.

[15] *VDT Recon Order* at 330, para. 181.

[16] *See* American Telephone & Telegraph Company's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 4 FCC Rcd 6930 at para. 6-7 (1989).

[17] The criteria for switch classification are met if equipment performs some, but not necessarily all, of the following basic switching functions: 1) *Attending* - monitors for off-hook signals; 2) *Control* - determines call destination and assigns call to available line or trunk; 3) *Busy testing* - determines whether the called line/trunk is busy; 4) *Information receiving* - receives control and busy test results; 5) *Information transmitting* - transmits control and busy test results to tell the alerting and interconnection functions whether to complete the call; 6) *Interconnection* - connects subscriber line to subscriber line or subscriber line to trunk; 7) *Alerting* - rings the called subscriber's line or other signalling means if the call is destined for another exchange; 8) *Supervising* - monitors for call termination so the line can be released. *See* Responsible Accounting Officer Letter 21, 7 FCC Rcd 6075 (1992).

equipment. Our decision regarding the accounting classification for video dialtone ATM equipment does not in anyway preclude LECs from demonstrating at a future date any functional change that should alter this classification.

Finally, we intend to amend RAO Letter No. 6 shortly to incorporate video dialtone plant investment within our existing itemized list of telecommunications plant in service.[18]

This letter is issued pursuant to authority delegated under §0.291 of the Commission's Rules, 47 C.F.R. §0.291. Applications for review under Section 1.115 of the Commission's Rules, 47 C.F.R. §1.115, must be filed within 30 days of the date of this letter. *See* 47 C.F.R. §1.4(b)(2).

If you have any questions, please contact Kenneth Ackerman or Daniel Gonzalez at (202) 418-0810.

Sincerely,

Kenneth P. Moran
Chief, Accounting and Audits Division
Common Carrier Bureau

[18] *See* Revised Responsible Accounting Officer Letter 6, 4 FCC Rcd 1965 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Paragon Cable LOI-93-25
Irving, TX

Letter of Inquiry- Negative Option
Billing Issues

MEMORANDUM OPINION AND ORDER

Adopted: March 20, 1995; Released: March 21, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. In a letter received by the Commission, dated September, 28, 1994, the City of Irving alleged violations by Paragon Cable ("Paragon") of Commission regulations governing the provision of cable television service. In response to this complaint, the Commission issued Letter of Inquiry 93-25 ("LOI") to Paragon on December 13, 1993.[1] The LOI asked Paragon to provide information concerning, among other issues, its compliance with the Communications Act's prohibition on negative option billing.

2. We conclude that Paragon's conduct, during the time period addressed by the LOI, with regard to eliminating the senior citizen discount and automatically subscribing senior customers to remote control units and monthly programming guides, did not violate the negative option billing provisions of federal law.

II. FACTS

3. Beginning September 1, 1993, Paragon restructured its service and equipment offerings on its cable system in Irving, Texas. Prior to September 1, 1993, Paragon offered senior citizens a 10% discount in the cost of basic service, a remote control unit and a monthly programming guide. After September 1, Paragon eliminated the discount and began charging senior citizens $.20 per month for remote control units and $1.00 per month for the programming guide. Paragon states that these rates are the same as all other subscribers paid at that time. Those subscribers who previously received the remote and programming guide as part of the senior citizen discount were given four months (until the end of December) to cancel these services and receive a credit to their account. Paragon states that all customers were notified of the service and rate changes by letter dated August, 1993.

III. BACKGROUND

4. In the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), Congress created a process for regulating cable programming and equipment rates. Section 3(f) of the 1992 Cable Act adds a new provision to the Communications Act which states that "[a] cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name."[2] It further specifies that "a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment."[3] This prohibited billing practice is commonly referred to as negative option billing.

5. In the *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation,* MM Docket 92-266, *Report and Order and Further Notice of Proposed Rulemaking,* (*"Rate Order"*)[4] implementing this Section of the 1992 Cable Act, the Commission explained that the prohibition against negative option billing applies to "additions of a new tier of service or a new single channel service without the affirmative assent of a subscriber."[5] It added, however, that the negative option billing provision does not apply to "a change in the mix of channels in a tier, including additions or deletions of channels . . . unless they change the fundamental nature of the tier" or to rate increases unless the price change is accompanied by a fundamental change in service, such as the addition of a new tier.[6] Further, it stated that restructuring of tiers and equipment will not bring the prohibition into play if the subscribers continue to receive the same number of channels and the same equipment unless the restructuring effects a fundamental change in the nature of the service.[7]

6. The Commission rule, with respect to negative option billing practices states, in relevant part:

> (a) A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. A subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A subscriber's affirmative request for service or equipment may be made orally or in writing.[8]

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[1] Letter from Roy J. Stewart, Chief, Mass Media Bureau, FCC, to Walter Nesbit, Vice President of Operations, Paragon Cable, LOI-93-25 (December 13, 1993).
[2] Communications Act of 1934 § 623(f), 47 U.S.C. § 543(f).
[3] *Id.*
[4] 8 FCC Rcd 5631 (1993).
[5] Rate Order ¶ 440.
[6] *Id.* 1
[7] *See Id.* at ¶ ¶ 440-441 & n.1105 (the Commission recognized that the 1992 Cable Act did not restrict movement of channels to deregulated status but it doubted that such changes would occur frequently).
[8] 47 C.F.R. § 76.981(a).

IV. DISCUSSION

A. Senior Citizen Discount

7. The 1992 Cable Act permits but does not require cable operators to provide discounts to subscribers who are senior citizens.[9] A cable operator, therefore, is not prohibited by our rules from eliminating any such discount. However, the elimination of the discount may result in an increase in the price of basic service for senior subscribers. In the *Rate Order*, the Commission stated "customer service rules require operators to give subscribers 30-days advance notice of any changes in rates" and thus "[w]e do not believe subscribers also need the additional protection of the negative option billing provision for every proposed rate increase, unless a price change accompanies a fundamental change in service, such as the addition of a new tier."[10] Any price change that might result from the elimination of the discount would not constitute a fundamental change in service under our rules. The senior subscribers continued to receive the same level of service they previously requested. Because we find that the elimination of the senior citizen discount does not result in a fundamental change in service, we conclude that the elimination of this discount does not implicate the federal negative option billing prohibition.

B. Remote Control Units and Monthly Programming Guides

8. The Commission's rules under the 1992 Cable Act required a variety of changes in the nature of the services to be marketed by cable operators. One such change is the requirement to unbundle equipment and installation from programming. The Commission stated that "unbundling rates for equipment, installation, and additional outlets from the rates for basic service best comports with our Congressional mandate."[11] Because the statute sets out different standards for evaluating equipment rates and basic cable service rates, the Commission required that the rates for each must be unbundled from one another.[12] Section 76.923(b) of the rules states "[a] cable operator shall establish rates for remote control units, converter boxes, other customer equipment, installation, and additional connections separate from rates for basic tier service. In addition, the rates for such equipment and installations shall be unbundled one from the other."

9. While the reasonableness of an operator's equipment and service charges is within the jurisdiction of the local franchise authority, here the issue is solely whether Paragon complied with the negative option billing prohibition when it billed its senior customers for the remote control units. Paragon claims that prior to September 1, 1993, the remote control units were included in the senior citizen discount. After September 1, 1993, Paragon charged its senior subscribers separately to lease their remote control units at $.20 per month. Paragon claims that the remote control units had been previously requested by the senior subscribers. Paragon makes a similar claim with respect to the monthly program guide, that is, that it was simply restructuring in accordance with our rules when it began to charge its senior subscribers for the programming guide.

10. With respect to restructuring equipment, Commission rules require cable operators to unbundle equipment rates from rates for basic service.[13] The Commission has provided guidance on the type of equipment which is subject to the unbundling requirement. In the *Rate Order*, the Commission determined that the type of equipment subject to unbundling is equipment "used by subscribers to receive basic tier service."[14] It concluded that a "converter box, remote control unit, connections for additional television receivers, and wiring that includes other inside cabling" is the type of equipment used to receive basic service.[15] In addition, the Commission rule with regard to unbundling requires a cable operator to establish separate rates for certain equipment and installations.[16]

11. Without passing on Paragon's claim that the remote control units had been previously requested, we believe that Paragon's separate itemization of this charge on these subscribers' bills was simply compliance with Commission rules requiring unbundling. Paragon's senior subscribers continued to receive the same level of service before and after Paragon unbundled its equipment rates with no change in the nature or legal status of the equipment. In light of this, we conclude that Paragon, with respect to its remote control units, did not violate the federal negative option billing restrictions, Section 3(f) of the 1992 Cable Act. Although a program guide is not an item subject to the equipment or installation rate regulation, its unbundling from the regulated tier charge appears indistinguishable from such charges for purposes of our negative option billing analysis. The programming guide, like the remote control, was previously provided as part of Paragon's discount package for its senior subscribers. After Paragon unbundled and eliminated the discount on programming rates, it continued to provide both programming guide and remote control to its senior subscribers.

V. ORDERING CLAUSES

12. Accordingly, IT IS CONCLUDED that Paragon Cable of Irving, Texas has not, with respect to the elimination of its senior citizen discount, violated Section 623(f) of the Communications Act of 1934, as amended, 47 U.S.C. § 543(f), and Section 76.981 of the Commission's rules, 47 C.F.R. § 76.981.

13. IT IS FURTHER CONCLUDED that Paragon Cable of Irving, Texas has not, with respect to the automatic subscription of its senior citizen customers to their remote control units, violated Section 623(f) of the Communications Act of 1934, as amended, 47 U.S.C. § 543(f) or Section 76.981 of the Commission's rules, 47 C.F.R. § 76.981.

14. IT IS FURTHER CONCLUDED that Paragon Cable of Irving, Texas has not, with respect to the automatic subscription of its senior citizen customers to a program-

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9 Communications Act of 1934 § 623(e)(1), 47 U.S.C. § 543(e)(1).
10 *Rate Order* ¶ 440.
11 *Rate Order* ¶ 287.
12 *Id.*
13 *See* ¶ 9, *supra.*
14 *Id.; See also Rate Order* ¶ 275.
15 *Rate Order* ¶ 282.
16 *See* ¶ 9, *supra.*

ming guide, violated Section 623(f) of the Communications Act of 1934, as amended, 47 U.S.C. § 543(f) and Section 76.981 of the Commission's rules, 47 C.F.R. § 76.981.

15. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by section 0.321 of the Commission's rules. 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

WARNER CABLE COMMUNICATIONS
OF CINCINNATI, INC.,
Petitioner,

v.

CITY OF CINCINNATI, OHIO,
Respondent.

Appeal of Local Rate Order

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 1995; Released: March 21, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On July 1, 1994, Warner Cable Communications of Cincinnati, Inc. ("Warner") filed an appeal of the local rate order, adopted on June 2, 1994, by its franchising authority, the City of Cincinnati, Ohio ("City"). In the local rate order, the City established regulated rates for basic cable service and associated equipment, provided by Warner, as allowed by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").[1] The local rate order establishes a new schedule of basic service and equipment rates and directs Warner to issue refunds to subscribers for all payments made in excess of the rates set forth in the local order for the period September 1, 1993 through July 14, 1994. The City opposes Warner's appeal.[2]

2. In the local rate order, the City required Warner to calculate its rates on a "community-by-community" basis; replaced the inflation index figure of 121.8 that Warner used in its Form 393 with a more recent, revised figure of 122.5; prevented Warner from counting a local ABC affiliate twice for purposes of calculating its per-channel rate; and disallowed Warner's treatment of its monthly "community service fee" as a franchise fee. Warner contends that those City actions were improper and in violation of our rules. Warner also claims that the procedures used by the City in adopting its local rate order violated the Commission's due process rules. We consider each of these issues in turn.

II. DISCUSSION

3. Under our rules, rate orders made by local franchising authorities may be appealed to the Commission.[3] In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as there is a reasonable basis for that decision.[4] Therefore, the Commission will reverse a franchising authority's decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules in rendering its local rate order.[5] If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.[6]

A. COMMUNITY-BY-COMMUNITY RATE CALCULATION

1. BACKGROUND

4. Warner first claims that the City erred by requiring it to base its FCC Form 393 rate calculations on what the City referred to as a "community-by-community" basis.[7] In preparing its FCC Form 393, Warner computed the rates and charges for its basic service and associated equipment using system-wide data. The pleadings do not clarify what the City meant by requiring data on a "community-by-community" basis, *e.g.*, whether it is referring to areas designated by Community Unit Identification ("CUID") numbers assigned by the Commission, or individual franchise areas, or some other community level area. Warner claims that at the time it set the rates reflected in the FCC Form 393, in the summer of 1993, system-wide data was the best and only information available and that Warner was only recently able to obtain more particularized data at the community level. While Warner states that it used community specific information when preparing its FCC Form 1200, Warner argues that it should not be required to retroactively adjust the rates on its FCC Form 393 to reflect community data because when those rates were set, they were based on the best information then available,

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[1] Under the 1992 Cable Act and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service and associated equipment. *See* Cable Television Consumer Protection and Competition Act, Pub. L. No. 1002-385, 106 Stat. 1460 (1992); Communications Act, § 623(b), *as amended*, 47 U.S.C. § 543(b) (1992).

[2] The City filed a response to Warner's appeal on July 18, 1994, to which Warner filed a reply on July 25, 1994. Warner also filed a petition requesting a stay pending Commission review of the local rate order on December 14, 1994. Because we reach the merits of Warner's appeal in this order, the stay petition will be dismissed as moot.

[3] *See* 47 C.F.R. § 76.944 (1993).

[4] *See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5731 (1993) (*"Rate Order"*); Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, and Buy-Through Prohibition, MM Docket No. 92-262, Third Order on Reconsideration, 9 FCC Rcd 4316, 4346 (1994) (*"Third Recon. Order"*).

[5] *Id.*

[6] *Id.*

[7] We define a "system community unit" as "[a] cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct municipal entity (including unincorporated communities within incorporated areas and including single, discrete unincorporated areas)." 47 C.F.R. § 76.5(dd) (1993). It is unclear whether the City is incorporating this definition in its use of the term "community."

which was system-wide data. The City claims that Warner was never given, nor did it request, permission to submit information on a system-wide basis.

2. DISCUSSION

5. The instructions to FCC Form 393 state that "[w]hen completing this form, except where noted, you [the operator] should use data from the community unit involved."[8] The form does indicate, however, that system-wide data may be used if all relevant factors -- program service and equipment rates, channel line-ups and franchise fees -- are identical and if the local franchise authority permits the use of such data.[9] In their pleadings, the parties use several different terms to refer to the form of the data used to calculate Warner's rates *(e.g.,* City specific, franchise specific and community-by-community), but do not define what any of those terms mean. On the basis of the pleadings, we are unable to determine exactly what kind of information Warner actually submitted and what kind of information the City actually used. Therefore, we cannot rule on whether the information submitted conformed with the requirements of the Commission's rules and FCC Form 393. However, unless Warner qualified to use system-wide data under our rules and, in turn, the City gave its permission to Warner to use system-wide data, Warner was obligated to submit its FCC Form 393 on a community-unit basis. We remand this issue to the City for further proceedings consistent with this order.[10]

B. CHANNEL COUNT

1. BACKGROUND

6. Warner next contends that the City erred in not allowing it to count the same ABC affiliate twice in establishing its "per-channel" rates. Warner carries the ABC affiliate in question on two separate channels on its system and the programming on those channels is therefore identical. Warner claims that it carries the station on two channels in response to customer demand related to the technical limitations of its system. Warner also contends that not allowing it to count the station twice violates Commission rules which prevent channels from being excluded from per-channel rate calculations because of their content. The City responds that it is not excluding the channel because of its content and that Warner should not be allowed to count the station twice because of its system's technical limitations.

2. DISCUSSION

7. Warner has carried the local ABC affiliate (WKRC-TV, Channel 12) on two different channels, 12 (A-7) and 25 (B-2) since November 1990. Warner claims this is due to the fact that its system is a dual-cable system. Odd numbered channels are carried on one cable, and even numbered channels are carried on the second cable. Two other local network affiliates (CBS and NBC) have odd-numbered off-air channel numbers: channel 9 (WCPO-TV) and channel 5 (WLWT-TV). Warner carries these stations on their off-air channel positions on its cable system. Because of Warner's dual-cable system, subscribers using a direct connection to their VCRs must use an A/B switch to tape programming from the separate cables. Warner claims that subscribers often set their VCRs to tape an ABC program and a program from one of the other broadcast networks in sequence. If a subscriber is not at home, however, he or she cannot switch between the two cables. Due to this technological shortcoming in its system, Warner also carries the ABC affiliate on the odd-numbered cable, where the NBC and CBS affiliates are carried, and claims it does so to facilitate VCR taping between these channels.[11]

8. The record in this proceeding is not sufficient to permit us to determine whether the City acted reasonably in making its findings on this issue below. The record implies that Warner was required to carry the ABC affiliate on its off-air position (12) because of the channel positioning requirements of our must-carry rules,[12] which permit a broadcast license to demand that its station be carried by a cable operator on its off-air channel position under certain circumstances.[13] This requirement, when coupled with the technological limitations of a dual-cable system could have justified counting the ABC channel twice. If such a situation exists here, and if more than a de minimis number of subscribers benefit from the dual carriage, then it could be unreasonable for the City to disallow Warner's double-count of the ABC affiliate.[14] This issue is therefore remanded to theCity for further proceedings consistent with this order.[15]

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[8] FCC Form 393, "Instructions for Worksheets Calculating Maximum Initial Permitted Rates for Regulated Cable Services," p. 10, n.1 . As a practical matter, in our rate regulatory context, the phrase "community unit" has usually been treated as the franchise area.

[9] *Id.; See Public Notice,* "Cable Television Rate Regulation: Questions and Answers Relating to FCC Form 393," Question and Answer No. 3 (released July 30, 1993).

[10] We also note that an operator must calculate its rates using data based only on those subscribers residing within its franchising authority's jurisdiction. If an operator's system serves subscribers residing outside of a particular franchising authority's jurisdiction, then, when setting its rates, the operator must allocate its system costs among all communities served. The operator should then remove the data associated with the basic tier subscribers who reside outside of the franchising authority's jurisdiction before finishing its Form 393 calculations. That ensures that the franchising authority does not regulate basic service and related equipment and installation rates outside of its jurisdiction and that the franchising authority's regulation of rates will not be distorted by data from areas outside of its jurisdiction. *See* New England Cablevision of Massachusetts, Inc., DA 94-1607, ¶ 10 (Cable Services Bureau, released December 28, 1994).

[11] Warner's Appeal at 29-30.

[12] Local commercial broadcast stations can, in certain instances, require an operator located in the same market as the broadcaster to carry its signal. *See* Communications Act, §§ 614-15, *as amended,* 47 U.S.C. §§ 534-35 (1992); 47 C.F.R. §§ 76.56-.70 (1993).

[13] *See id.*

[14] Our ruling here is consistent with our decision in Cox Cable Hampton Roads, Inc. (Virginia Beach, Virginia), DA 94-1288 (Cable Services Bureau, released November 18, 1994) (*" Cox Cable"*), where we disallowed the operator from double counting channel carried on both its basic and cable service programming tier. The system in Virginia Beach was not a dual cable system and our must-carry and channel positioning rules were not implicated.

[15] Warner's argument regarding content-based regulation is

C. COMMUNITY SERVICE FEE

1. BACKGROUND

9. Since January, 1990, Warner has been charging subscribers what it refers to as a monthly "community service fee." By charging subscribers this community service fee, Warner claims it is recouping substantial expenses incurred in complying with new obligations imposed by the City when the parties modified their franchise agreement in 1989. From the pleadings and the record below, the expenses appear to be costs associated with providing public, educational and governmental ("PEG") access channels and an institutional network for the City. Warner argues that this fee should be considered a part of its franchise fee which, as an external cost, would allow Warner to continue to charge subscribers for the fee as a separate item on their bills, as it did until the City passed the local rate order at issue here. Warner claims that it did not treat the community service fee as an internal cost (i.e., included in the per-channel rates derived in Worksheets 1 and 2 of Form 393) in deriving its maximum permitted rate for its basic tier service because it had traditionally treated the fee as an external cost. As an external cost, Warner added and itemized the fee on subscribers' bills in the same manner as its franchise fees. In the alternative, Warner argues that if the Commission finds that its community service fee cannot be treated as an external cost, then Warner must be allowed to treat the fee as an internal cost in calculating its per-channel rates on FCC Form 393. The City's rate order did not allow Warner to recover the fee by any means.

10. The City responds by stating that Warner fails to recognize the difference between franchise "requirements," which is what the City asserts the community service fee at issue is, and franchise "fees." Although the 1981 franchise agreement required Warner to establish PEG access and an institutional network, the City argues that the 1989 franchise modification agreement ended that obligation by requiring a lump sum payment from Warner to the City. The City further claims that if Warner prevails on its appeal, Warner would collect revenue twice for the same PEG channels since it would be allowed both to externalize PEG costs when determining original maximum basic service rates and to continue to count PEG channels among the number of basic service channels used to establish maximum rates.

2. DISCUSSION

11. Franchise fees are accorded external cost treatment under our rules.[16] A cable operator's permitted per-channel charges for regulated programming services may be adjusted for changes in external costs, which are defined by the Commission's rules.[17] While our regulations provide that an operator may only adjust its charges to the extent that certain external cost increases exceed the rate of inflation, franchise fees can be fully recovered without regard to the treatment of inflation on Form 393. All other "external" costs must be internalized in an operator's initial rate calculations. Franchise fees are defined in the Communications Act as "any tax, fee, or assessment of any kind imposed by a franchising authority . . . on a cable operator or cable subscriber . . . solely because of their status as such."[18] The same provision of the Communications Act, however, specifically excludes from that definition "payments . . . made by the cable operator . . . for, or in support of, the use of, public, educational, or governmental [PEG] access facilities."[19] The "community service fee" at issue is in the nature of a payment made in support of PEG access facilities, which excludes it from the definition of franchise fee. The distinction is evident on Warner's subscriber bills, where it separately itemizes the franchise and "community service fee," thus recognizing the separate identity of each.[20] Therefore, the "community service fee" is not entitled to external cost treatment.

12. In the alternative, Warner argues that if the community access fee is not considered a part of its franchise fee, then the fee should be included in its rate calculations on Form 393. Our regulations provide that the operator may adjust its permitted per channel charges for regulated programming services to the extent that certain external cost increases exceed the rate of inflation.[21] Among those costs are payments to local franchising authorities for PEG access.[22] Except in the case of franchise fees, however, the operator should include these external costs in its initial rate calculations on FCC Form 393. PEG access fees and external costs other than franchise fees should be included in the per-channel rates calculated in Worksheets 1 and 2 of a cable operator's FCC Form 393.[23] Thereafter, any future changes in external costs greater than the rate of inflation should be allowed as adjustments to an operator's permitted charges. Adjustments to Warner's permitted charges should be made according to the Commission's rules for the treatment of external costs. [24] Warner may not bill for the costs separately as it is currently doing. This issue is therefore remanded to the City for further proceedings consistent with this opinion.[25].

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without merit. The City disallowed a double count of the local ABC affiliate not because it objected to the content of the programming, but because the programming on the two channels was identical.

[16] 47 C.F.R.§ 76.922(d)(2) (1993).

[17] *See* 47 C.F.R. § 76.922(d)(3) (1993).

[18] Section 622(g) of the Communications Act; 47 U.S.C. § 542(g).

[19] *Id.* The statutory exclusion of PEG fees from the definition of franchise fees applies only to PEG fees paid pursuant to a requirement of a franchise in effect on the date of enactment of Title VI of the Communications Act. That Title was enacted on October 30, 1984. The original franchise agreement between Warner and the City was entered into in 1981.

[20] *Id. See* 47 U.S.C. §622(c)(2) (1993) and 47 C.F.R. § 76.985 (1993), under which a cable operator may identify as separate line items both franchise fees and PEG fees.

[21] Implementation of Sections of the Cable Television Consumer Protection and competition Act of 1992: Rate Regulation, MM docket No. 92-266, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, 9 FCC Rcd 1164, 1209-10 (1993) (*"First Rates Reconsideration Order"*); 47 C.F.R. § 76.922(d)(3) (1993).

[22] *Id.*

[23] 47 C.F.R. § 76.922(d)(3)(iv)(C) (1993).

[24] *See* 47 C.F.R. § 76.922(d) (1993).

[25] The City contends that a 1989 modification to the 1981 franchise agreement between the parties included a payment from Warner that was intended to fund PEG access through the remainder of the franchise term and therefore Warner may no longer charge subscribers for the access fee. If the City's contention is true, however, Warner may still recover the payment as

D. INFLATION INDEX

1. BACKGROUND

13. Warner next contends that the City erred by replacing theAugust, 1993 inflation index figure of 121.8, which Warner used in its Form 393 calculations, with the revised inflation index figure of 122.5, which the United States Department of Commerce published after Warner set its rates in the fall of 1993. Warner claims, citing our rules, that since the inflation index it used was accurate at the time the rates in question were set, it should not be required to use the more recent figure. The City counters that, since the City required Warner to recalculate its rates based on community data, Warner should have used the most recent inflation index in those recalculations.

2. DISCUSSION

14. Our rules do not require operators to change their rates to reflect more current data when the rates in question were calculated with old data that was accurate at the time.[26] If, however, the rates were calculated with old or incorrect data that was not accurate at the time, then the operator must correct its inflation adjustment with current data.[27] On remand, if the City determines that Warner should be permitted to double count the local ABC affiliate in establishing its per-channel rates, Warner may rely on its original inflation index figure.[28] If, however, the City determines that Warner may not double count the ABC affiliate, Warner must revise its inflation figure. Warner's appeal on this issue is therefore remanded to the City for further proceedings consistent with the terms of this order.

E. DUE PROCESS

1. BACKGROUND

15. Finally, Warner contends that the City violated the Commission's due process rules in adopting the local rate order. Specifically, Warner states that our rules were violated by the City's actions in passing separate ordinances, one regarding the community service fee and the other on basic cable service and equipment rates; failing to provide Warner adequate opportunity to comment on the proposed ordinances; and conducting a hearingon the ordinances as if it were a legislative rather than an adjudicatory proceeding. Warner also claims that the City's public statement regarding the hearing reported "blatant untruths" about the hearing. The City responds by stating that Warner was given ample opportunity to participate in the rate-making process and that the Commission's due process rules were followed in all other respects. The City states that it had numerous informal meetings with representatives from Warner during the rate making process, exchanged several letters with Warner related to its Form 393, conducted a public hearing on Warner's Form 393 at which representatives from Warner were in attendance and passed its local rate order at a public meeting of the City Council.

2. DISCUSSION

16. Our rules require that a franchising authority must provide a reasonable opportunity for consideration of the views of interested parties.[29] Our rules also require the franchising authority to issue a written report if it disallows the operator's proposed rates.[30] The written report must affirmatively demonstrate why the operator's proposed rates are unreasonable and why the prescribed rates are reasonable.[31] There is no requirement that the franchising authority embody its rate order into a single document, rather than passing separate rate orders, as the City did here. We do not require evidentiary hearings; although certainly if circumstances dictate, such hearings would be permitted. However, we deem it sufficient for the local authority to consider the written views of interested persons on issues raised about the operator's proposed rates.[32] Here, the City met with Warner representatives on numerous occasions, exchanged written correspondence on issues raised by Warner and had two public meetings related to Warner's Form 393, one at which its Form 393 was the exclusive item considered. The rate orders also set forth and affirmatively demonstrate the City's findings with regard to the issues that had been discussed previously. It is clear from the record below that the City conducted its review of Warner's Form 393 in compliance with the procedural safeguards established by the Commission. We conclude that, in considering Warner's Form 393 and in adopting local rate orders reflecting that consideration, the City acted reasonably and met our procedural requirements.

III. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that Warner's appeal of Cincinnati's local rate order, regarding the inflation index and external treatment of the community access fee and due process issues, IS DENIED.

18. IT IS FURTHER ORDERED that Warner's appeal, regarding the community-by-community rate calculations, channel count issue and inclusion of the community service fee in Warner's initial rate calculations on FCC Form 393, IS REMANDED to the local franchising authority for further proceedings consistent with this opinion.

19. IT IS FURTHER ORDERED that Warner's petition for a stay pending review of its appeal IS DISMISSED as moot.

20. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by § 0.321 of the Commission's rules. 47 C.F.R. § 0.321 (1993).

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described above, assuming the 1989 payment has not yet been completely recovered by Warner. Other than the above analysis of the applicable law and the Commission's rules, we will not attempt to interpret the parties' franchise agreement and modification. Any disputes the parties have regarding those agreements should be resolved according to state law by courts of competent jurisdiction. *See* 47 C.F.R. § 76.944(a) (1993).

[26] *Third Recon. Order,* 9 FCC Rcd at 4349. ("When current rates are accurately justified by analysis using old data that was accurate at the time, cable operators will not be required to change their rates.").

[27] "When current rates are *not* [emphasis in original] justified by analysis using the old data, cable operators must correct their rates using current data." *Id.*

[28] If, on remand, Warner is required to recalculate its rates based on community rather than system-wide data, Warner may still rely on its original inflation index. Community data is not "new," it is simply old data in a new form.

[29] 47 C.F.R. § 76.935 (1993).

[30] 47 C.F.R. § 76.936 (1993).

[31] *Rate Order,* 8 FCC Rcd at 5723-5724.

[32] *Rate Order,* 8 FCC Rcd at 5724, n.367.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Westerly Cable Television, Inc. CUID No. RI0035
Charlestown, Rhode Island

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 22, 1995; Released: March 24, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the price Westerly Cable Television, Inc. ("Operator") was charging for its cable programming service ("CPS") tier in Charlestown, Rhode Island, CUID No. RI0035. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first complete and timely CPS complaint in Charlestown, Rhode Island, CUID No. RI0035, was completed and served on Operator on December 17, 1993 and received by the Commission on December 27, 1993.

5. Operator attempted to justify its CPS price through an FCC Form 393 filed on March 11, 1994. Operator amended its justification on June 23, 1994 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally,[11] and on January 24, 1995, in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[12]

III. DISCUSSION

6. In its amended benchmark filing of January 24, 1995, Operator calculated a maximum permitted price for the CPS tier of $2.95 per month.[13] However, Operator's actual price for the CPS tier was $3.04 per month. Thus, Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. Furthermore, upon review of Operator's filing, as amended, we have found the following errors that would require a recalculation of Operator's maximum permitted CPS price:

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS price under the new regulations. *See* para. 3, *infra*. Furthermore, to the extent that the price as of March 31, 1994 is found to be excessive, reductions in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its price for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

[13] Operator recalculated its inflation adjustment in its January 24, 1995 amendment in accordance with the principles set out in the Public Notice.

a. In Column G of Schedules A and C of Part III of its FCC Form 393, Operator did not correctly account for its income tax expense. By placing entries in these columns, Operator confirms that it is a tax-paying entity (i.e., a "C" corporation). However, Operator incorrectly calculated its income tax by simply applying the corporate tax rate to its return on investment. The Commission has stated that tax-paying business entities must gross-up their tax entries in Column G of Schedules A and C (i.e., calculate the tax as a percentage of return on investment plus tax).[14] By understating its tax entries in Column G, anpoperator reduces its effective rate of return on equipment and installations and thereby could increase its CPS price. We therefore recalculate Column G of Schedules A and C (and subsequent steps) using correctly grossed-up tax entries.

IV. CONCLUSIONS

7. Upon review of the record herein, we conclude that Operator's showing supports a maximum reasonable CPS tier price of $2.94 per month (plus franchise fee) for the period December 27, 1993 to May 14, 1994.[15] However, we further determine that the refund at issue is such a de minimis amount that it would not serve the public interest to order a refund.

8. We further conclude that Operator must reflect in its FCC Form 1200 rate filing for the period after May 14, 1994 the fact that Operator's price during the earlier period was unreasonable.[16] We reserve the right to make further adjustments to Operator's price for the period after May 14, 1994 upon completion of our review of Operator's FCC Form 1200 rate filing.

9. We further conclude that Operator has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[17] As provided in the Public Notice, we will relieve Operator of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

10. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the December 17, 1993 complaint against the cable programming service price charged by Operator in Charlestown, Rhode Island, CUID No. RI0035, and all other complaints in this franchise area relating to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED TO THE EXTENT INDICATED HEREIN.

11. IT IS FURTHER ORDERED that the benchmark filing submitted by Operator with respect to Charlestown, Rhode Island, CUID No. RI00355, for the period of December 27, 1993 to May 14, 1994, justifies a maximum price of $2.94 per month (plus franchise fee) for the cable programming service tier.

12. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to Charlestown, Rhode Island, CUID No. RI0035, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted rate (plus franchise fee).

13. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a CPS tier price that reflects the reduction in the CPS rate determined in this Order.

14. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

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[14] *First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking,* MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164, 1196 n.92 (1993) ("Our provision to gross-up the return amount for income taxes applies to all tax paying business entities to the extent that they have a state or federal income tax obligation.") *See also Cable Television Rate Regulation Questions and Answers Relating to FCC Form 393,* Question and Answer No. 14 (released July 30, 1993) ("The federal tax expense should be calculated based upon a pre-tax return on investment.")

[15] This finding is based solely on the representations of Operator listed in paragraph 5, *supra,* and the modification described in paragraph 6, *supra.* Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[16] We reviewed Operator's FCC Form 1200 rate filing and confirmed that Operator calculated its rates for the period after May 14, 1994 using the rate that we find in this Order to be unreasonable.

[17] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases,* DA 94-1556 (Dec. 29, 1994).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Harron Communications Corp. CUID No. NY0078
New Hartford, New York

Benchmark Filing To Support
Cable Programming Service Price

Memorandum Opinion and Order

Adopted: March 21, 1995; Released: March 23, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider a complaint about the price Harron Communications Corp. ("Harron") was charging for its cable programming service ("CPS") tier in New Hartford, New York, CUID No. NY0078. Harron has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Harron's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first complete and timely CPS complaint in New Hartford, New York, CUID No. NY0078 was completed and served on Harron on September 15, 1993 and received by the Commission on September 20, 1993.

5. Harron filed an FCC Form 393 for New Hartford, New York, CUID No. NY0078 on November 15, 1993. Harron submitted additional information on February 7, 1995 in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[11]

III. DISCUSSION

6. Harron asserts that its monthly CPS tier price is justified by its benchmark filing because its price is equal to the maximum permitted charge of $11.55, as calculated in the filing. Upon review of Harron's Form 393 filing, we have found that Harron has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Harron's calculations in Form 393:

a. In Column G of Schedules A and C of Part III of its FCC Form 393, Harron did not report any income tax expense. Harron is a Subchapter C corporation and is therefore required to pay corporate income tax.[12] By omitting its tax entries in Column

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Harron has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Harron implemented its CPS prices under the new regulations. *See* para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, reductions in Harron's price for the period after May 14, 1994 may be required to reflect the fact that Harron's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 7 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration* 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 (Dec. 29, 1994) (*"Public Notice"*); see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan. 20, 1995).

[12] *See* Harron's filing on FCC Form 1205, page 1 (filed August 15, 1994).

G, an operator reduces its effective rate of return on equipment and installations and thereby could increase its CPS price. We therefore recalculate Harron's federal income tax allowance on Column G of Schedules A and C on the basis of a 35% corporate tax rate.[13] Furthermore, the Commission has stated that tax-paying business entities must gross-up their tax entries in Column G of Schedules A and C (i.e., calculate the tax as a percentage of return on investment plus tax).[14] In accordance with thispprinciple, we recalculate Column G of Schedules A and C (and subsequent steps) using a grossed-up federal income tax rate of 53.85% of Harron's return on investment.

b. In its Form 393 filing of February 7, 1995, Harron incorrectly calculated the Inflation Adjustment Factor (Form 393, Part II, Worksheet 1, Line 127, and Form 393, Part II, Worksheet 4, Line 401). Lines 122 and 125 of Form 393 require the operator to enter Gross National Product Price Index ("GNP-PI") data for the latest quarter for which data is available that ended before the date through which the Inflation Adjustment Factor is calculated. On its most recent Form 393, Harron calculated the Inflation Adjustment Factor through October 1993. However, Harron completed Lines 122 and 125 using updated GNP-PI data for the first quarter of 1993, rather than the third quarter of 1993. Harron's calculation of the Inflation Adjustment Factor is therefore incorrect.

c. We must therefore recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available in accordance with the Form 393 Instructions.[15] On its most recent Form 393, Harron entered 13 months on Line 124, indicating that its filing was as of the end of October 1993. However, Harron's use of the 13 months entry is impermissible. The first valid complaint in CUID No. NY0078 was served on September 15, 1993. The instructions to Form 393, page 11, require that the Inflation Adjustment Factor be calculated using "the number of whole months from September 30, 1992 to the date you will submit this form." In general, a cable operator must submit a justification of its rates no more than 30 days after service of the earliest valid complaint.[16] The Inflation Adjustment Factor therefore must be calculated as if Harron had filed Form 393 within this 30-day period. On July 29, 1994, the Department of Commerce released corrected inflation data including GNP-PI figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor of 1.028 through September 1993 for CUID No. NY0078.

7. Because of these errors, we conclude that Harron has failed to demonstrate that its price for the CPS tier was not unreasonable. We will therefore set a price for this tier, incorporating the adjustments discussed above. These adjustments have the cumulative effect of reducing the maximum permitted monthly CPS tier price from $11.55 to $11.40.

IV. CONCLUSIONS

8. Upon review of the record herein, we conclude that Harron's showing supports a maximum reasonable CPS tier price of $11.40 (plus franchise fee) for CUID No. NY0078 for the period from September 20, 1993 to May 14, 1994.[17] We further determine that we will order appropriate refunds pursuant to Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957, in order to reimburse subscribers for the amount they paid in excess of a reasonable price.

9. We further conclude that Harron must reflect in its FCC Form 1200 rate filings for the period after May 14, 1994 the fact that Harron's price during the earlier period was unreasonable.[18] We reserve the right to make further adjustments to Harron's price for the period after May 14, 1994, upon completion of our review of Harron's FCC Form 1200 rate filings.

10. We further conclude that Harron has submitted in good faith an optional supplemental filing in response to our *Public Notice*. As provided in the *Public Notice*, we will relieve Harron of its obligation to obtain advance Commission approval of adjustments to its CPS price for one year following the release of this Order.

11. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint filed on September 20, 1993 against the cable programming service price charged by Harron Communications Corp. in the Town of New Hartford, New York, CUID No. NY0078 IS GRANTED TO THE EXTENT INDICATED HEREIN.

12. IT IS FURTHER ORDERED that the benchmark filing submitted by Harron Communications Corp. with respect to the Town of New Hartford, New York, CUID No. NY0078, for the period beginning on September 20, 1993 and ending on May 14, 1994, justifies the maximum price of $11.40 (plus franchise fee) for Harron Communications Corp.'s cable programming service tier.

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[13] *Id.*

[14] First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164, 1196 n.92 (1993) ("Our provision to gross-up the return amount for income taxes applies to all tax paying business entities to the extent that they have a state or federal income tax obligation.") *See also* Cable Television Rate Regulation Questions and Answers Relating to FCC Form 393, Question and Answer No. 14 (released July 30, 1993) ("The federal tax expense should be calculated based upon a pre-tax return on investment.")

[15] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[16] *See* 47 C.F.R. § 76.956(a).

[17] This finding is based solely on the representations of Harron listed in paragraph 5, *supra*, and the modifications described in paragraph 6, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[18] We reviewed Harron's FCC Form 1200 rate filings and confirmed that Harron calculated its rates for the period after May 14, 1994 using the rates that we find in this Order to be unreasonable.

13. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that Harron Communications Corp. shall refund to subscribers that portion of the amounts paid for cable programming service for the period from September 20, 1993[19] to May 14, 1994 which exceeded $11.40 (plus franchise fee) per month in the Town of New Hartford, New York, CUID No. NY0078 and was thus unreasonable, plus interest to the date of the refund.

14. IT IS FURTHER ORDERED that Harron Communications Corp. shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

15. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(C), that Harron Communications Corp. shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to the Town of New Hartford, New York, CUID No. NY0078, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal $11.40 (plus franchise fee).

16. IT IS FURTHER ORDERED that Harron Communications Corp. shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a price that reflects the reduction in the CPS rate determined in this Order.

17. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that Harron Communications Corp. shall not be required to obtain advance approval of adjustments to its CPS price in New Hartford, New York, CUID No. NY0078 for one year following the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

[19] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Monmouth Cablevision Associates	CUID Nos. NJ0503 (Lakewood Township) NJ0531 (Howell Township)

Benchmark Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 22, 1995; Released: March 24, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the price that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the communities designated above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. The first valid CPS complaints in each of the franchise areas which are the subject of this Order were completed and served on Operator and received by the Commission on the dates set forth on Appendix A. Operator filed FCC Form 393 in response; Operator has also filed amended and supplemental Form 393 filings, most recently on February 7, 1995.[11]

5. On January 12, 1994, Operator filed a motion to dismiss the complaint referenced on Appendix A for CUID No. NJ0531. Operator argues that the complaint should be dismissed because the complainant included rates and channel offerings on the basic tier, as well as CPS rates and programming, in response to questions 8 and 9 of FCC Form 329 as it then existed. Operator further asserts that complainant incorrectly indicated in response to question 6 that he was complaining about a rate increase after September 1, 1993, rather than the rate in effect on September 1, 1993. Operator's assertions do not persuade us that the complaint is invalid or should be dismissed. In general, we will find valid any complaint that states a claim on which relief can be granted and provides adequate information to allow us to process the complaint, despite minor flaws or inaccuracies. We believe this approach best implements the mandate of the 1992 Cable Act. Because the complainant's response to question number 9 includes channels contained on the CPS tier and because the rates listed in answer number 8 and on the attached bill indicate that the complainant received the CPS tier, we find it reasonable to conclude that the complainant objected to the CPS rate and that he believed that rate was unreasonable. Furthermore, contrary to Operator's assertion, the complainant's

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Opeartor implemented its CPS price under the new regulations. *See* para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] Operator's February 7, 1995 submission was made in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings. Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 94-1556 (Dec. 29, 1994) and Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases, DA 95-87 (Jan. 20, 1995) (together, *Public Notice*).

answer to question number 6 correctly states that he was challenging the rate in effect on September 1, 1993. We therefore find the complaint valid and deny Operator's motion to dismiss the complaint.[12]

6. In its February 7, 1995 amended filing, Operator calculated a maximum permitted price for the CPS tier of $13.34 per month. However, Operator's actual price for the CPS tier was $13.80 per month. Thus, Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. Furthermore, upon review of Operator's Form 393 filings, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. The 1992 Cable Act requires operators to fully unbundle equipment and installation costs from programming costs.[13] The Commission's regulations implement Congress' directive by requiring operators to establish an equipment basket which includes "all costs associated with providing customer equipment and installation."[14] In Part III of FCC Form 393, an operator calculates its total customer equipment and installation costs which constitute the equipment basket. Form 393, Part II, Worksheet 3 unbundles these costs from the operator's total permitted regulated revenues in order to establish its maximum service rates.

b. In reporting its capital costs of leased customer equipment on Form 393, Part III, Schedule C, Operator did not include any costs for remotes. Operator's rate cards indicate that as of September 30, 1992 it leased remotes to customers for a monthly fee, and as of the initial date of regulation it provided remotes at "no fee" per month. Thus, Operator's monthly equipment revenue as of September 30, 1992 on Form 393, Part II, Worksheet 2, Line 204 includes revenue derived from the rental of remotes, but its unbundling figure on Part II, Worksheet 3, Line 301 does not include any costs associated with remotes. Because Operator calculates its permitted programming rates based on its September 30, 1992 regulated revenues and is not subtracting its costs for remotes from these revenues, Operator is recovering the costs associated with its rental of remotes through its charges for the basic and CPS tiers. Such a result is contrary to the statutory and regulatory unbundling requirement. Under our rules, an operator may choose not to charge customers for premises equipment, but it may not recover its costs associated with customer equipment through its programming rates.[15]

c. Because Operator has not reported its equipment costs for remotes, we must calculate a cost based on the best evidence available to us.[16] In order to do so, we examined the Form 393 filings made by Operator's affiliates in the State of New Jersey, and we observed that the reported gross book cost per unit of remotes ranged from $8.01 to $9.20. We then imputed to Operator a gross book cost per remote at the midpoint of this range, or $8.61. We further assumed, consistent with the filings of Operator's affiliates, that the number of remotes in service equalled the number of converters in service, and that Operator's remotes were depreciated according to the same schedule as its converters. Based on these assumptions, we calculated Operator's total annual capital costs for remotes to be $31,664. We therefore increased Operator's annual customer equipment and installation costs on Part III, Step G, Line 32 by $31,664, and made corresponding adjustments to Part III, Step G, Line 34 and Part II, Worksheet 3, Line 301.

d. In its most recent amended filing, Operator entered $11.02 for the basic service tier and $13.34 for the CPS tier on Form 393, Part II, Worksheet 1, Line 101 as its current monthly rates as of the initial date of regulation. However, Operator's rate card indicates that its actual monthly rates, exclusive of franchise fees, were $11.40 for the basic tier and $13.80 for the CPS tier. These figures are consistent with Operator's entries on Form 393, Part I and with Operator's Line 101 entries in its earlier Form 393 filings. The instructions to Form 393 require the operator to enter on Line 101 its actual current monthly charges. We have therefore corrected Line 101 to match the figures on Operator's rate card.

e. Operator's Form 393, Part II, Worksheet 1, Line 104 entry does not represent its current monthly equipment revenue as of the initial date of regulation. Instead of entering its current monthly equipment revenue, as required by the Form 393 instructions, Operator entered a figure based on its prior equipment rates. This observation is confirmed by the fact that Operator's Worksheet 2, Line 204 entry is the same as its Worksheet 1, Line 104 entry. As a result, Operator's Line 104 entry must be revised to reflect its current monthly equipment revenue. Since Operator restructured its rates, including its equipment rates, on September 1, 1993 in an attempt to comply with the Commission's regulations, the monthly equipment cost figure it entered on Line 34 of Step G of Part III should have been close or identical to its Line 104 revenue entry.[17] Ac-

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[12] Operator has also moved to dismiss complaints that were filed later than the complaints referenced in Appendix A in both of the franchise areas addressed in this Order. Because we have accepted the complaints referenced in Appendix A as properly filed, we find it unnecessary to rule on Operator's objections to the later filed complaints.

[13] 47 U.S.C. § 543(b)(3).

[14] 47 C.F.R. § 76.923(c).

[15] We also note that according to Operator's rate card, as of the initial date of regulation it offered new and used remotes for sale to subscribers. This practice creates a potential for Operator to recover its costs associated with remotes twice: once through its charges for rate-regulated services, and again through its sales revenues.

[16] *See* Third Order on Reconsideration, MM Docket Nos. 92-266 and 92-262, FCC 94-90, 9 FCC Rcd 4316 at 4348, ¶ 90 (1994); Cable Operators' Rate Justification Filings, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994); *see also* TCI Cablevision of Greater Michigan, Inc., CUID Nos. MI0025 *et al.*, DA 95-271, para. 8e (Cab. Serv. Bur., released Feb. 21, 1995).

[17] *See* Questions and Answers on Completion of FCC Form 393 and Associated Filing Requirements, Question and Answer No. 7 (released Nov. 10, 1993) ("Where operators have restructured equipment rates as of September 1, 1993 in accordance with our regulations . . . operators will enter on Line 104 the same, or nearly the same, number as on Line 301.").

cordingly, we correct Operator's Line 104 entry to equal Line 34, as adjusted pursuant to paragraph 6c, *supra*.

f. In its most recent amended Form 393 filing, Operator calculated the Inflation Adjustment Factor (Line 127, Worksheet 1, Part II) as of the end of January 1994 using data released by the U.S. Department of Commerce on December 1, 1993. However, Operator's use of January 1994 as the base date through which it calculated the inflation adjustment is impermissible. Based on the date that the earliest valid complaint was filed in each franchise area, the instructions to Form 393 permitted Operator an inflation adjustment only through November 1993 in CUID No. NJ0503 and December 1993 in CUID No. NJ0531.[18] Operator cannot be permitted to claim an additional inflation adjustment simply because it later amended its Form 393 filings. We must therefore recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the dates on which Operator should have filed Form 393.[19] On July 29, 1994, the Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992, 125.7 for the third quarter of 1993, and 126.5 for the fourth quarter of 1993. Using these GNP-PI figures, we calculate 1.032 as the Inflation Adjustment Factor through November 1993 in CUID No. NJ0503, and 1.034 as the Inflation Adjustment Factor through December 1993 in CUID No. NJ0531.

7. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rate it was charging during the period in question. Operator's showing justifies the maximum reasonable CPS tier prices shown on Appendix B (plus franchise fee) for the period from the filing of the earliest complaint in each franchise area (as set forth in Appendix A) to May 14, 1994.[20]

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Operator's motion to dismiss the complaint filed December 16, 1993 against its cable programming service price in Howell Township, New Jersey, CUID No. NJ0531, IS DENIED.

9. IT IS FURTHER ORDERED that the complaints referred to in Appendix A against the cable programming service price charged by Operator in the areas referenced in the caption and at Appendix A herein, and all other complaints in these franchise areas related to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the communities shown in Appendix B that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A)[21] to May 14, 1994 which exceeded the maximum price for each franchise area set forth in Appendix B (plus franchise fee) per month, plus interest to the date of the refund.

11. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

12. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to the communities listed herein, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price in each franchise area set forth in Appendix B (plus franchise fee).

13. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filings required above, prices that reflect the reductions in the CPS rates determined in this Order.

14. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance approval of adjustments to its CPS prices in the franchise areas addressed herein for one year following the release of this Order, due to Operator's having submitted in good faith optional supplemental filings in response to our *Public Notice*.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

[18] *See* FCC Form 393, page 11, instructions for line 124 (Inflation Adjustment Factor is calculated using "the number of whole months from September 30, 1992 to the date you will submit this form"); 47 C.F.R. § 76.956(a) (operator must file a response within 30 days of the date of service of a complaint).

[19] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[20] This finding is based solely on the representations of Operator and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[21] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
NJ0503	11/29/93	11/24/93
NJ0531	12/16/93	12/13/93

Appendix B

CUID No.	Actual Rate	Maximum Permitted Rate
NJ0503	$13.80	$13.16
NJ0531	$13.80	$13.19

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-135

In re Applications of

THE PETROLEUM V. NASBY CORPORATION — File No. BRH-890601VB

For Renewal of License
of Station WSWR(FM)
Shelby, Ohio

THE PETROLEUM V. NASBY CORPORATION — File Nos. BTCH-921019HX and BTCH-921019HY

For Transfer of Control of
Station WSWR(FM)
Shelby, Ohio

Appearances

Ann C. Farhat, on behalf of The Petroleum V. Nasby Corporation; and *Y. Paulette Laden*, on behalf of the Chief, Mass Media Bureau.

DECISION

Adopted: May 22, 1995; Released: June 5, 1995

By the Review Board: MARINO (Chairman) and GREENE.

Board Member GREENE:

1. This proceeding involves the applications of The Petroleum V. Nasby Corporation (Nasby) for renewal of license of Station WSWR(FM), Shelby, Ohio, and for *nunc pro tunc* approval of the transfer of control of Station WSWR(FM). The central question presented is whether the criminal activities of Thomas L. Root, its former principal and legal counsel, impact adversely on Nasby's respective applications. The issues designated for hearing by the Commission are as follows:

> (1) To determine the effect of Thomas L. Root's federal and state convictions on the basic qualifications of the Petroleum V. Nasby Corporation.
>
> (2) To determine, pursuant to Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules, whether Thomas L. Root and Kathy G. Root engaged in the unauthorized transfer of control of the Petroleum V. Nasby Corporation.
>
> (3) To determine, in light of the evidence adduced pursuant to the above issues, whether grant of the renewal application of The Petroleum V. Nasby Corporation will serve the public interest, convenience and necessity.
>
> (4) To determine, in light of the foregoing, whether approval of the pending application to transfer control of The Petroleum V. Nasby Corporation will serve the public interest, convenience and necessity.[1]

The Commission also specified a forfeiture provision against Nasby for wilful and/or repeated violations of Section 310(d) of the Act and Section 73.3540 of the Rules. *Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture (HDO)*, 8 FCC Rcd 4035, 4036 (1993).

2. In an *Initial Decision (I.D.)*, 9 FCC Rcd 6072 (ALJ 1994), Administrative Law Judge Edward Luton (ALJ) determined, first, that Root's criminal convictions did not support a denial of Nasby's application for renewal of license and, second, that, although control of Nasby was transferred unlawfully without Commission approval, the unauthorized transfer was not accompanied by deceit or concealment and thus did not warrant denial of Nasby's applications. Because Nasby's "neglect" made the illegal transfer possible, however, the ALJ imposed a forfeiture of $4,000.

3. The proceeding is now before the Review Board on exceptions filed by the Chief, Mass Media Bureau and contingent exceptions filed by Nasby.[2] We have reviewed the *I.D.* in light of these exceptions, the responsive pleadings, and the hearing record, and conclude that the ALJ correctly resolved the key issue of the impact of Root's criminality on Nasby's qualifications in the licensee's favor. Accordingly, we affirm the renewal of license for Station WSWR(FM). In light of this conclusion, we need not reach Nasby's limited exceptions, which are nondecisional. *See* 47 CFR §1.282(b)(2). Furthermore, because neither party has excepted to the ALJ's resolution of the transfer of control issue or his assessment of a forfeiture for the unauthorized transfer, we will not dwell on these issues either. *See* 47 CFR §1.277(a); *Short Broadcasting Co., Inc.*, 8 FCC Rcd 5574 (Rev. Bd. 1993). We will, however, for reasons to be stated hereinafter, affix a specific divestiture condition to the approval of the renewal and transfer applications. Therefore, we turn our attention to the only significant disputed issue, the core question of whether the ALJ erred in finding Nasby qualified to remain a licensee despite the criminal convictions of its erstwhile principal, Mr. Root.

4. Thomas L. Root served as one of Nasby's three directors and its corporate secretary for approximately seven years, from prior to May 1983 until March 21, 1990, when

[1] As explained in the *Hearing Designation Order*, 8 FCC Rcd 4035, 4036 (1993), consideration of the transfer of control application is initially dependent on the question of whether Nasby is entitled to renewal for, absent a favorable resolution in this regard, there is no license to convey. See *Jefferson Radio Inc. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

[2] We will deny Nasby's request for oral argument. Neither its limited exceptions nor the record or issues in this case are so lengthy or complex as to warrant such argument. *See Hara Broadcasting*, 8 FCC Rcd 3177 (Rev. Bd. 1993).

he resigned his positions. During the same period, from prior to 1983 until his resignation on April 25, 1990, he also served as Nasby's general counsel and communications counsel. In addition, Root was also a significant shareholder in Nasby until June 23, 1989, at one time holding 44.5% of the corporate issued and outstanding stock in his name and an additional 10% as custodian for his minor children.[3] Root represented applicants for FM construction permits before the Commission, some of which were formed by Sonrise Management Services, Inc. (Sonrise). *I.D.*, paras. 2, 17-18; Joint Exh. 1 (Stipulation of Facts), at 1; Nasby Exh. 2; Bureau Exhs. 11, 12.

5. On March 21, 1990, a thirty-three count federal indictment was entered against Root in the United States District Court for the District of Columbia and, three months later, on June 21, 1990, Root was also indicted on four counts in the United States District Court for the Southern District of Illinois. The two criminal actions were consolidated on September 11, 1990. Root entered a plea in the consolidated federal proceeding and was found guilty on January 17, 1992 of two counts of altering, forging, and counterfeiting public records, three counts of wire fraud, and one count of transporting stolen monies obtained by fraud. The illegalities, which occurred in the course of Commission licensing proceedings, included the submission of a counterfeit FAA no hazard determination in 1988, and the forging of a counterfeit order of an administrative law judge in 1989. Nasby was not involved in any of these licensing proceedings. Following his conviction, Root was sentenced to a term of thirty-three months in federal prison. *I.D.*, paras. 3-4; Stipulation at 1-2; Bureau Exhs. 1, 2, 3.

6. State court indictments were also entered against Root in North Carolina and Florida in connection with the formation by Sonrise of FM construction permit applicants before the Commission. On June 4, 1990, three indictments were returned against him in Nash County, North Carolina and on October 26, 1990, Root pled no contest to ninety counts of selling an unregulated security, ninety counts of failing to register as a securities dealer, one hundred and eighty counts of securities fraud, and four counts of conspiracy. As a result, on August 28, 1992, Root was sentenced to fifteen years in prison to be served concurrently with his federal term. *I.D.*, para. 5; Stipulation at 2-3; Bureau Exhs. 4, 5, 6. On August 13, 1990, an indictment was returned against Root in Pinellas County, Florida and, on January 10, 1991, a superseding indictment was filed against him. On June 23, 1992, Root pled no contest and was found guilty of one count of racketeering, one count of conspiracy to commit racketeering, three counts of organized fraud, one count of organized securities fraud, twenty counts of sale of unregistered securities, and twenty counts of securities fraud. He was sentenced to fifteen years to be served concurrently with his North Carolina and federal sentences. *I.D.*, para. 6; Stipulation at 3; Bureau Exhs. 7, 8, 9, 10.

7. While he was a Nasby principal, Root attended corporate meetings. Director and shareholder meetings were held annually and were presided over by David L. Williamson, the station's general manager. Williamson also served as one of Nasby's three directors, its president and treasurer, and was a stockholder. He resigned his corporate positions in 1989, and was succeeded by Timothy J. Moore, who then presided at the corporate meetings. At shareholder meetings, Root was available to answer questions and explain legal issues. At board meetings, where financial matters were discussed, officers elected, and the salary of the general manager set, Root voted on all matters coming before the board. *I.D.*, paras. 7-8; Nasby Exhs. 1-3; tr. 84-85.

8. In August 1988, when WSWR(FM) was experiencing financial difficulties, including a threat of action from the Internal Revenue Service, Williamson informed Root who then advanced Nasby the $40,000 needed to satisfy the Service. In November 1988, when Moore became Nasby's acting general manager, he and Root negotiated station loan refinancing at the local bank. As Nasby's secretary, Root executed the financial documents and provided his personal guarantee. Since that time, all station refinancing has been handled by Moore. During his tenure as general manager, Williamson had sole access to the station's checking accounts. From November 25, 1988 until September 7, 1993 (when it was discovered that his name had not been removed following his resignation), Root also had bank signature authority, but Root did not sign any WSWR(FM) checks during Moore's tenure. *I.D.*, paras. 9-10; Nasby Exhs. 1, 2; tr. 66.

9. It was Williamson's testimony that during his tenure at WSWR(FM), he alone exercised control over the day-to-day operations of the station with no assistance from Root or the other Nasby board member, Emma D. Slone. All station employees reported to Williamson and he was solely responsible for employment policies and practices. He also determined the station's format, programming, and commercial policies. Likewise, Moore testified that during his tenure, he also exercised day-to-day control of the operations of the station, including employment policies and practices, programming, and commercial policies. *I.D.*, para. 11; Nasby Exhs. 1, 2; tr. 58-59.

10. During the time he served as a corporate officer and director of Nasby, Root was not involved in the day-to-day management, operation, or control of the station. As Nasby's corporate counsel, Root was consulted periodically by Williamson and Moore on such matters as the review of contracts, and inquiries regarding Commission subjects relating to contests, lotteries, and political advertising. In addition, Root assisted Nasby with the filing of ownership information and applications and maintained the Nasby corporate book. *I.D.*, paras. 15-16; Nasby Exh. 1, at 3-7; Nasby Exh. 2, at 3-8; Nasby Exh. 3, at 3-4.

11. In March 1990, Moore received a letter from Root saying he was resigning as an officer and director of Nasby. No reason for the resignation was offered and Moore did not speak to Root at the time to learn the reason for his resignation. When Root resigned as legal counsel in April 1990, Moore recalled that Root was experiencing personal legal and financial problems stemming from an airplane crash he had survived months earlier, and Moore assumed that Root's resignation as legal counsel was intended to shield the station and its image in the community from any negative impact resulting from that incident. Moore stated he had no knowledge that Root was under criminal investigation and that Root did not tell him or any other Nasby officer or director of that fact. *I.D.*, para. 12; Nasby Exh. 1, at 6-7. This testimony was unchallenged.

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[3] *See* para. 23, *infra*.

12. On May 31, 1990, the Commission wrote to Nasby rescinding an earlier grant of its renewal application. No specific reasons for setting aside the grant were stated. Upon receipt of this letter, Moore, who was "quite surprised", contacted Root, who, in turn, stated he had no idea why the Commission had taken this action. Root did volunteer that Nasby had to file its annual ownership report in June 1990 and Root assisted in its preparation. It was not until Nasby obtained new legal counsel that Moore was informed of the Commission's concerns regarding Root and the potential impact on Nasby's qualifications. *I.D.*, para.13; Bureau Exh. 11, at 25; Bureau Exh. 12, at 28; Nasby Exh. 1, at 7-8.

13. Following his resignation as an officer and director, and his transfer of his stock ownership, Root has not attended or participated in corporate meetings. Moore has maintained the corporate record book since Root's resignation as legal counsel. Other than his assistance in preparing the ownership report in June 1990, Root has provided no further assistance to Nasby. *I.D.*, para. 14; Nasby Exh. 1, at 6; tr. 66-67.

14. The ALJ concluded that Root's criminal activities, while serious, could not be imputed to Nasby, which had neither been convicted nor accused of criminal conduct. He found that although Root played an active corporate role as an officer, director, and legal counsel, he was not involved in the day-to-day operations of the station. The management, operation, and control of WSWR(FM) rested with others, the ALJ stated, and, long prior to his federal and state convictions, Root had departed from his ownership and corporate roles at the station. The other Nasby principals were unaware of Root's criminal activities, the ALJ noted, and Root had no further connection with Nasby following his resignation, other than his assistance with the filing of an ownership report prior to the time Nasby acquired new counsel. The ALJ concluded that Root's involvement with Nasby was not so pervasive as to implicate its ability to obey the law or require denial of its license renewal.

15. In its exceptions, the Bureau argues that Root's misconduct, which led to his felony convictions, was wilful, frequent, current, and serious, and was directly related to the Commission's licensing activities. The Bureau disagrees with the ALJ's reliance on *Sande Broadcasting, Inc.*, 61 FCC 2d 305 (1976) and *Chapman Radio and Television Co.*, 70 FCC 2d 2063 *(1979)*, as support for exonerating Nasby, and contends that it is significant that the nondisqualifying misconduct in those cases did not involve broadcasting or any application before the Commission. Instead, the Bureau relies on the Board's holding in *West Jersey Broadcasting Co.*, 90 FCC 2d 363 (Rev. Bd. 1982), for the proposition that "the Commission does not distinguish between guilty and innocent principals", and will disqualify whenever a corporate principal is engaged in serious wrongdoing. Moreover, the Bureau argues, Root participated extensively in Nasby's activities and was in control of the largest single block of Nasby stock at the time of his misconduct. It concludes that Root's resignation prior to his convictions should not insulate the licensee.

16. In evaluating an applicant's or licensee's character qualifications, the Commission will consider evidence of felony convictions. *Character Policy Statement*, 5 FCC Rcd 3252 (1990). This is so because a broadcaster's propensity to obey the law generally is a clear indicant of whether it can be relied on to deal truthfully with the Commission and comply with its rules and policies. The Commission is concerned with persons whose ownership interests are cognizable under the multiple ownership rules or who are in a position to potentially influence or control the operation of the station. *Character* Policy Statement, 102 FCC 2d 1179, 1205-06 (1986). Because not all crimes are equally probative of an applicant's inclination to conform to FCC rules and policies, the Commission examines traditional mitigating factors in particular cases, which include the wilfulness, frequency, currentness, and seriousness of the misconduct, overall record of compliance with FCC rules and policies, and rehabilitation. *Id.* at 1227-29; *Character Policy Statement*, 5 FCC Rcd at 3252; *Hara Broadcasting, Inc.*, 8 FCC Rcd 3177, 3179 (Rev. Bd. 1993).

17. Beyond peradventure, the misconduct of Mr. Root, which led to his criminal convictions, was wilful, repeated, recent, and quite serious, occurring as it did in the context of the prosecution of applications before the Commission and involving incidents such as the submission of a fraudulent FAA clearance and the forgery of an ALJ's signature on a bogus document. Equally beyond question is that Root played a major and active role in Nasby as paramount stockholder, corporate secretary, one of three corporate directors, and legal counsel. Were Nasby an individual applicant owned and controlled exclusively by Root, there would be little doubt that his criminal activities catalogued in the record before us would require the denial of its applications. The issue is joined in this case, however, over the question of whether Root's individual criminality fatally infects the greater corporate entity that is the licensee.

18. In analyzing this question, we initially reject Nasby's contention that Root's resignation prior to his convictions insulates the licensee from the effect of his criminal behavior. In *TV 9, Inc. v. FCC*, 495 F. 2d 929 (D.C. Cir. 1973), *cert. denied*, 419 U.S. 986 (1974), the court made clear that the significance of the impact of a corporate principal's criminal conviction is not mooted by his resignation, *see* 495 F. 2d at 939-40, and that, moreover, is the law of this case. *See HDO*, 8 FCC Rcd at 4036.[4] In *TV 9*, as in this case, the individual engaged in criminal misconduct, was an officer, director, stockholder, and legal counsel to the corporate applicant. On remand, after lengthy review, the Board held that despite the tainted principal's continuing participation in policy decisions as an officer and director, because he did not have a controlling stock interest and his misconduct was apparently unknown to the other corporate principals, only a comparative demerit would be imposed. *Mid-Florida Television Corp.*, 69 FCC 2d 607, 653 (Rev. Bd. 1978), *set aside on settlement*, 87 FCC 2d 203 (1981).[5] Here, Root, although an active participant in corporate affairs in his capacity as secretary, director, and legal counsel, individually owned and controlled more than 50%

[4] Unlike the situation involving voluntary resignation presented in this case and in *TV 9*, the Commission may take into account and weigh the impact of the prompt ousting of a wrongdoer by the other principals at the time his misconduct comes to light. *See Central Texas Broadcasting Co.*, 74 FCC 2d 393, 409 (1979); *Nuance Corp.*, 85 FCC 2d 412, 417 (Rev. Bd. 1981).

[5] The demerit imposed, a substantial one, had a significant negative impact on the applicant's standing in the ultimate comparative analysis in that case, *see* 69 FCC 2d at 654, but

of Nasby's stock for only a day or two[6] (albeit he and his wife together did and were able to effectively transfer control). Furthermore, there is no evidence that other Nasby principals were aware of Root's illegal acts. Nor does the record indicate any involvement by Nasby or any other Nasby principal in any of the broadcast applications involved in Root's wrongdoing.

19. Although the Bureau is correct that the criminal conduct at issue in *Chapman Radio* and *Sande Broadcasting*, the cases relied upon by the ALJ, did not involve broadcasting or any application before the Commission, nevertheless, other factors in the Commission's resolution of those cases support Nasby's position. In *Chapman*, as here, no corporate stockholder was aware of or participated in the criminal wrongdoing of the principal in question. *See* 70 FCC 2d 2082, 2106 (ALJ 1979), *aff'd.*, 70 FCC 2d 2063 (1979); *see also Leflore-Dixie, Inc.*, 100 FCC 2d 331, 337 (Rev. Bd. 1985). And, in *Sande*, the Commission found no basis to impute the criminal wrongdoer's individual acts to the licensee because there was no showing that he was involved in the day-to-day operation of the radio station. *See* 61 FCC 2d at 308-09. Similarly, in the case at hand, although Root was active in his corporate roles, day-to-day operation and management were in the hands of the respective corporate presidents and station general managers, Williamson and Moore.

20. Furthermore, we disagree with the Bureau that a careful reading of *West Jersey*, the case it principally relies on, requires denial of license renewal here. There, the licensee was denied renewal because it violated Section 311 of the Communications Act, 47 U.S.C. §311, and engaged in accompanying misrepresentations, by illicitly paying $25,000 in excess of the amount approved by the Commission for withdrawal of a competing application. The Board rejected the licensee's request that it should find qualified a 30% "innocent" principal of the licensee and permit renewal solely to allow a transfer of control to that individual. The Board's statement in that case that it would not "atomize a licensee into its molecular elements for a gratuitous adjudication on the discrete qualifications of an individual stockholder", 90 FCC 2d at 371, quoted by the Bureau, hardly supports the Bureau's contention that a licensee is in all cases fatally tainted by the misconduct of one of its principals. In *West Jersey*, the licensee's misbehavior was undertaken on behalf of the licensee and directly involved the license in question and its procurement, which is quite unlike the situation in the present case where the licensee and the station seeking renewal were entirely uninvolved in Root's misconduct.

21. In short, we are not compelled by the evidence or the case law to adopt the Bureau's flat prescription in this case. In our view, the Commission must examine all the factors presented by an instance of individual principal criminality to determine whether license renewal is in the public interest. Where, as here, there is no evidence of licensee knowledge or involvement in the individual's misconduct, and that individual was not in control of the daily operation and management of the station, there would seem to be no inference to be drawn of a propensity generally by the licensee to disobey the law or the Commission's rules and policies and little public purpose served by punishing it for the transgressions of a single member. The fact that the illegalities occurred here in the context of broadcast proceedings before the Commission, while reprehensible in and of itself and deserving of severe sanction with respect to the wrongdoer himself, nevertheless, cannot, without some evidence of greater licensee complicity or *scienter* on the part of its managing principals, be attributable to the larger corporate entity. In sum, the license, now shorn of Root's taint, may be renewed.

22. As we indicated earlier, there are no exceptions taken to the ALJ's determination that the transfer of control, although illegal, was not accompanied by misrepresentation and, therefore, consistent with Commission precedent, would not require removal of the license. While we will not, *sua sponte*, review this holding, we will attach a specific condition to renewal of the license as well as approval of the transfer. The facts are, briefly, as follows.

23. As of May 29, 1989, Root individually owned 120.25 shares or 24.5% of Nasby's 500 shares of issued and outstanding stock. He also held 50 shares or 10% as custodian for his minor children. On May 30, he acquired another 100 shares or 20% from the Williamson family, giving him 54.5% ownership. On May 31, he transferred the 50 shares he held as custodian for his children to his wife, Kathy G. Root, as custodian. On June 1, Root transferred 50 shares back to the corporation in return for forgiveness of a corporate debt which he had assumed, thus reducing the total issued and outstanding stock to 450 shares, and transferred 100 shares to his minor children as gifts, with 25 of the shares apparently being passed through his wife on the same date,[7] leaving her with a total of 33 shares owned individually.[8] The stock transfers to the Root children were intended to give them equal ownership shares in Nasby. These shares were placed in a trust with Mrs. Root's mother, Arlene Gere, as trustee. On June 23, Root transferred his remaining 70.25 shares to his parents, Thomas F. and Joanne Root. Cumulatively, these transactions beginning May 31 resulted in the transfer of more than 50% of Nasby's stock, and Nasby seeks *nunc pro tunc* approval of the resultant transfer of control.[9] Nasby also seeks approval of the proposed transfer of the 70.25 shares owned by Root's parents to the law firm of Ginsburg, Feldman &

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these considerations are no longer germane. *See Character Policy Statement*, 102 FCC 2d at 1230-32.

[6] This was between May 30, 1989, when he acquired 100 shares from the Williamsons, and May 31, 1989, when he transferred 50 shares he held as custodian for his minor children to his wife as custodian. *See* para. 23, *infra*.

[7] The record is not clear on this latter point because the parties' Stipulation (Joint Exh. 1) indicates separate transfers on June 1 of 100 shares by Root and 25 shares by Mrs. Root to their children, whereas the transfer application (Bureau Exh. 11) and amendment thereto (Nasby Exh. 5) show a total of only 100 shares held in trust for the children. We are accepting the information in the amended application because the amendment was intended to correct the information previously submitted.

[8] It does not appear from the record when Mrs. Root acquired these shares.

[9] Although the transfer of control application on its face appears to reflect only those transactions that began on May 31, in fact, as noted in the text, one day earlier when Root acquired the 100 shares from the Williamsons which gave him 220.25 shares individually in addition to the 50 shares he held as custodian for his children, for a total of 270.25 of the then issued and outstanding 500 shares of Nasby, he obtained sole *de jure* control. No application has been filed to report this earlier transfer.

Bress to cover legal fees incurred in representing Root. *I. D.*, paras. 17-22; Stipulation at 3-5; Nasby Exhs. 4, 5; Bureau Exh. 11.

24. As a consequence of the unusual circumstances presented by this case, namely, that the voluntary removal of the wrongdoer from the applicant licensee was accomplished largely through the transfer of his considerable ownership interest to his family, the record now indicates that the Root children (through a trustee) own 100 shares of Nasby, Mrs. Root individually owns 33 shares, and she holds an additional 50 shares as custodian for her children, resulting in a total of 183 shares held by the immediate Root family, which equates to 41% ownership.[10] While we do not wish to visit the sins of the father upon the children, nevertheless, we do not believe the public interest would be served by giving effectuation to an *arabesque* of stock transfers which, when all is said and done, results in retention of significant ownership of the station in the hands of members of the immediate Root family. We note, particularly, that Kathy G. Root, who, together with her husband, was responsible for the unauthorized transfer for which Nasby seeks belated approval, would, as an individual owner, and on behalf of her children, be a beneficiary of this arrangement. In addition, it appears that Joanne Root, Thomas Root's mother, who, together with her husband, was the recipient of 70.25 of Root's shares, has succeeded Root to Nasby's three-member board and as corporate secretary. *See* tr. 63; Bureau Exhs. 11, 12. In our view, only a complete divestiture to unrelated third parties of the Root family holdings involved in the unauthorized transfers of control can provide the Commission with adequate assurance that WSWR(FM) will not again be subjected to public scrutiny to determine the potential impact of Mr. Root's presence. Accordingly, we will condition both the grant of license renewal and transfer application approval with provision for appropriate divestiture of stock ownership and corporate membership resulting from the illegal transfers.[11] *See Spanish International Communications Corp.*, 2 FCC Rcd 3336, 3339 (1987) (Commission has discretion in fashioning remedy in case involving alien ownership which ALJ found to be in violation of Section 310(b) of the Act, 47 U.S.C. § 310(b), to approve settlement agreement providing for grant of renewal applications subject to immediate transfer of stations to unrelated buyers who have no alien owners), *aff'd sub nom. Coalition for the Preservation of Spanish Broadcasting v. FCC*, 931 F. 2d 73 (D.C. Cir. 1991), *cert. denied*, 502 U. S. 907 (1991); *see also Fox Television Stations, Inc.*, FCC 95-188, released May 4, 1995 (Commission renews license despite violation of Section 310(b) alien ownership restrictions conditioned upon submission by licensee of public interest showing justifying non-compliance or statement demonstrating future compliance); *Deer Lodge Broadcasting, Inc.*, 86 FCC 2d 1066 (1981) (Where licensee's illegal transfer of control was not accompanied by concealment, Commission imposed sanction of short-term renewal). In so holding, we make clear that the divestiture condition attaches to the renewal of license granted herein because if it attached solely to *nunc pro tunc* approval of the transfer of control and Nasby did not comply with the condition, a return of the ownership situation to the *status quo ante* would place significant Nasby stock ownership back in Mr. Root's hands, an obviously unacceptable result in view of his criminal record. In sum, we grant the applications before us with the express understanding that Mr. Root and members of his immediate family will not in the future retain ownership or corporate position in WSWR(FM).[12]

25. ACCORDINGLY, IT IS ORDERED, That the application of The Petroleum V. Nasby Corporation (File No. BRH-890601VB) for renewal of license of Station WSWR(FM) IS GRANTED, and the applications of The Petroleum V. Nasby Corporation (File Nos. BTCH-921019HX and BTCH-921019HY) for transfer of control of Station WSWR(FM) ARE GRANTED; and

26. IT IS FURTHER ORDERED, That grant of the applications for renewal of license and transfer of control of Station WSWR(FM) is conditioned upon the sale of the ownership interests of Kathy G. Root, Thomas P. J. Root, Leslie J. L. Root, and Travis S. C. Root in WSWR(FM), including those interests held in trust for Thomas P. J. Root, Leslie J. L. Root, and Travis S. C. Root, and the sale of the 70.25 shares held by Thomas F. and Joanne Root that are the subject of the proposed transfer to Ginsburg, Feldman & Bress, to unrelated buyers, and the resignation of Joanne Root from her corporate positions, within sixty (60) days of the release of this opinion; and

27. IT IS FURTHER ORDERED, That The Petroleum V. Nasby Corporation shall FORFEIT to the United States the sum of four thousand dollars ($4,000) for violation of Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules, as described above. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument payable to the Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION

Marjorie Reed Greene
Member, Review Board

[10] This figure does not include the 70.25 shares transferred by Root to his parents, which brings the present family ownership resulting from the aggregate transactions to over 50%, because these shares are the subject of the proposed transfer to Ginsburg, Feldman & Bress.

[11] The interest of Root's parents in 25 shares of Nasby stock acquired apart from the illegal transfers addressed herein is not affected by this order.

[12] Any further modification to the transfer of control applications or amendment necessitated by the divestitures ordered herein should be filed with the appropriate officials of the Mass Media Bureau.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

KBLCOM, Incorporated CUID Nos. CA0750, CA0751,
Orange County, California CA0752, CA0932

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 10, 1995: Released: March 13, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the price KBLCOM, Incorporated d/b/a Paragon Cable ("Paragon") was charging for its cable programming service ("CPS") tier in the communities designated by the CUID numbers referenced above in Orange County, California. Paragon has attempted to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Paragon's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first complete and timely CPS complaint in each of the communities which are the subject of this Order was completed and served on Paragon on December 10, 1993 and filed with the Commission on December 16, 1993.

5. Paragon attempted to justify its CPS prices for the communities which are the subject of this Order through an FCC Form 393 filed on February 7, 1994. Paragon filed an amended FCC Form 393 on July 1, 1994 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally.[11]

6. Paragon also filed motions to dismiss complaints filed against its price in CUID Nos. CA0750 (filed March 28, 1994), CA0751 (filed February 28, 1994), and CA0752 (filed February 7, 1994). In these motions, Paragon disputes the validity of complaints that were received after the filing date of the first valid complaint in each franchise area on December 16, 1993. Because we have accepted the earlier complaints as properly filed, we find it unnecessary to rule on Paragon's objections to the later filed complaints.

III. DISCUSSION

7. Paragon asserts that its monthly CPS tier price of $4.45 per subscriber is justified by its benchmark filing because its price is lower than the maximum permitted charge as calculated in the filing. Upon review of Paragon's Form 393, we have found no apparent errors that would require a recalculation of Paragon's maximum permitted CPS price.

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Paragon has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking,* MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Paragon implemented its CPS price under the new regulations. *See* para. 3, *infra.*

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended,* 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation,* FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration,* 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration,* 9 FCC Rcd at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings,* DA 94-526, 9 FCC Rcd 7751 (Cab. Serv. Bur. 1994).

IV. CONCLUSIONS

8. Upon review of the record herein, we conclude that Paragon has demonstrated that $4.45 (plus franchise fee) was a reasonable CPS tier price in CUID Nos. CA0750, CA0751, CA0752, and CA0932 for the period from December 16, 1993 to May 14, 1994.[12]

9. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints filed on December 16, 1993 against the cable programming service price charged by KBLCOM, Incorporated d/b/a Paragon Cable in Westminster, California, CUID No. CA0750; Huntington Beach, California, CUID No. CA0751; Fountain Valley, California, CUID No. CA0752; and Stanton, California, CUID No. CA0932, and all other complaints in these franchise areas relating to the same price, ARE DENIED TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED that the benchmark filing submitted by KBLCOM, Incorporated d/b/a Paragon Cable with respect to Westminster, California, CUID No. CA0750; Huntington Beach, California, CUID No. CA0751; Fountain Valley, California, CUID No. CA0752; and Stanton, California, CUID No. CA0932, for the period from December 16, 1993 to May 14, 1994, justifies a price of $4.45 per month (plus franchise fee) for KBLCOM, Incorporated d/b/a Paragon Cable's cable programming service tier.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

[12] This finding is based solely on the representations of Paragon listed in paragraph 5, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: March 21, 1995

SNET APPLICATION TO AMEND ITS SECTION 214 AUTHORIZATION TO CONSTRUCT AND OPERATE, ON A TRIAL BASIS, A VIDEO DIALTONE PLATFORM FILE NO. W-P-C-6858

On March 15, 1995, the Southern New England Telephone Company (SNET) filed an Application to amend its existing Section 214 authorization to conduct a video dialtone technical and market trial. The Commission initially granted SNET authorization to conduct a limited trial in West Hartford for one year. The Commission subsequently authorized SNET to expand its video dialtone trial to include additional communities in its service area. (*See Order and Authorization,* W-P-C-6858, 9 FCC Rcd 1019 (1993) and *Order and Authorization,* W-P-C-6858, 9 FCC Rcd 7715 (1994).)

SNET seeks to amend its authorization to eliminate a provision that prohibits it from providing video programming to its telephone subscribers. In addition, SNET seeks to amend its authorization to include a provision allowing it to provide video programming under the same regulatory structure that has been authorized for other local exchange carriers that provide such video programming.

Interested parties are invited to file comments on the application. Comments should be filed by **April 10, 1995**, and reply comments by **April 20, 1995**, with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Three copies should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the application can be obtained from ITS at (202) 857-3800. The application is available for review and photocopying at the FCC Public Reference Room, 6th Floor, 2025 M Street, N.W., Washington, D.C., from 8:30-12:30 and 1:30-3:00, Monday through Thursday.

We will continue to treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 418-1579.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Cencom Cable Entertainment, Inc. CUID No. SC0094, Clinton, SC

Benchmark Filing to Justify Cable Programming Service Rate

MEMORANDUM OPINION AND ORDER

Adopted: March 29, 1995; Released: March 30, 1995

By the Deputy Chief, Cable Services Bureau:

1. Here we consider a complaint about the price Cencom Cable Entertainment, Inc., ("Operator") was charging for its cable programming service ("CPS") tier in the community referenced above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. On February 2, 1994, Operator filed a Motion to Dismiss the complaint because the complainant, a municipal entity, failed to submit a copy of its cable bill. We do not require municipal entities to submit cable bills since they are not expected to subscribe to the cable service at issue. We therefore deny Operator's motion.

5. Operator asserts that its monthly CPS price is justified by its benchmark filing because this price is less than the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.[11]

6. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that Operator's motion to dismiss the complaint referenced herein IS DENIED.

7. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint referenced herein against the cable programming service price charged by Operator in the community referenced above IS DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Service Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 94-157

In the Matter of

Pacific Bell — Transmittal No. 1773
Tariff F.C.C. No. 128

U S West — Transmittal No. 584
Tariff F.C.C. No. 5

MEMORANDUM OPINION AND ORDER SUSPENDING RATES

Adopted: March 24, 1995; Released: March 24, 1995

By the Chief, Tariff Division, Common Carrier Bureau:

I. INTRODUCTION

1. On January 20, 1995, Pacific Bell and US West filed the above-captioned transmittals to reflect the exogenous treatment of Statement of Financial Accounting Standard No. 106 (SFAS-106), "Employers Accounting for Postretirement Benefits Other Than Pensions." On February 6, 1995, MCI Telecommunications Corporation (MCI) filed a petition to suspend and investigate both transmittals. Pacific Bell and US West filed replies on February 16, 1995. For the reasons given below, we suspend the Pacific Bell and US West transmittals and include them in our investigation in CC Docket No. 94-157.[1]

II. BACKGROUND

2. The investigation in CC Docket No. 94-157 was initiated in December 1994 to consider the local exchange carriers' (LECs') requests for exogenous treatment of SFAS-106 costs. In that proceeding, a number of LECs sought to adjust their price cap index (PCI) levels to reflect implementation of SFAS-106 since the United States Court of Appeals decision in *Southwestern Bell Telephone Company v. FCC*, 28 F. 3d 165 (D.C. Cir. 1994). In that case, the United States Court of Appeals for the District of Columbia Circuit reversed and remanded a Commission Order which concluded that increases in booked Other Postretirement Employee Benefits (OPEB) costs caused by the implementation of SFAS-106 were not eligible for exogenous treatment.[2] SFAS-106 requires companies to account for OPEBs on an accrual basis, treating OPEBs as a form of deferred compensation earned by employees during their working years. Accordingly, the costs of OPEBs are recognized during the years the benefits are earned, rather than during the years when the amounts of benefits are actually paid by the company. In addition, SFAS-106 requires companies to recognize on their books the amount of their unfunded obligation for OPEBs to retirees and to active employees as of the date of their adoption of SFAS-106. This obligation is known as the Transitional Benefit Obligation (TBO).[3]

3. While it is clear that after the *Southwestern Bell* decision, *supra*, changes in LEC OPEB costs caused by the implementation of SFAS-106 are eligible for exogenous treatment, other issues remain that concern the specific adjustments that LECs may make to their PCI levels to reflect the cost change. Those issues are now under investigation in CC Docket No. 94-157.

III. PLEADINGS

A. The Transmittals.

4. In Transmittal No. 1773, Pacific Bell proposes to increase its PCI to incorporate exogenous cost adjustments resulting from adoption of SFAS-106.[4] Pacific Bell asserts that its proposed exogenous cost adjustment is temporary and is intended to recover the revenues it would have earned during the period between adoption of the *OPEB Order* and its reversal and remand. In addition, Pacific Bell is proposing increases to its PCI in an amount that reflects its on-going annual requirement for recovery of the incremental costs associated with the adoption of SFAS-106.[5] Pacific Bell states that these incremental costs are based on a number of actuarial assumptions, including average age and number of retirees, rate of inflation for medical costs, and return on plan assets, *i.e.* the OPEB and Voluntary Employee Beneficiary Association (VEBA)[6] funds. Pacific Bell assumes that these funds are earning a return on investment of 9 and 8.5 percent respectively.[7]

5. US West proposes in Transmittal No. 584 to adjust its PCI to reflect the difference between the TBO portion SFAS-106 and the ongoing incremental costs of adopting SFAS-106.[8] US West states that it is seeking to reflect the difference between TBO exogenous cost treatment, already in its PCI, and the incremental OPEB costs that it may

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[1] Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690, et al, CC Docket No. 94-157, Memorandum Opinion and Order, DA 94-1613 (Com. Car. Bur., rel. Dec. 29, 1994) (*SFAS-106 Suspension Order*).

[2] Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers' Accounting for Postretirement Benefits Other Than Pensions," CC Docket No. 92-101, Suspension and Investigation Order, 7 FCC Rcd 2724 (Com. Car. Bur. 1992), Memorandum Opinion and Order, 8 FCC Rcd 1024 (1993) (*OPEB Order*).

[3] TBOs were created as a result of both the change from cash-based to accrual accounting and the SFAS-106 requirement that companies recognize on their books the amount of their unfunded obligation for OPEBs to retirees and to active employees existing as of the date of their adoption of SFAS-106. This unfunded obligation reflects the amount that a company would have accrued on its books as of the effective date of the accounting change if it had been operating under the accrual method. *SFAS-106 Suspension Order*, at para. 7.

[4] Pacific Bell Transmittal No. 1773, Description and Justification (D&J) at 1.

[5] *Id.*

[6] A VEBA fund is established by the employer to partially fund OPEB obligations.

[7] Pacific Bell D&J at Appendix "Direct Case filed by Pacific Bell in Suspension and Investigation Order," CC Docket No. 92-101 at 14.

[8] U S West Transmittal No. 584, D&J at 1-1.

now submit for exogenous cost treatment based on the *Southwestern Bell* decision.[9] According to US West, these incremental OPEB costs were calculated using standard actuarial assumptions, including that its VEBA and OPEB fund obligations that were funded on December 31, 1992 are assumed to be earning a 9 percent and 8.5 return on investment, respectively.[10]

B. MCI's Petition

6. MCI filed a petition to suspend and investigate both the Pacific Bell and US West transmittals. MCI contends that the Commission's Responsible Accounting Official (RAO) Letter 24[11] bars Pacific Bell and US West from recovery of OPEBs until those costs are actually incurred.[12] According to MCI, the Commission has established that work force reduction costs should be recognized when they actually occur. MCI claims that Pacific Bell and US West are proposing to adjust their existing PCIs for exogenous work force costs they expect to incur in the future. Premature recognition of OPEBs will, according to MCI, allow both Pacific Bell and US West to raise their PCIs and realize more pricing flexibility, especially for raising prices, in monopoly access markets.[13] MCI objects to Pacific Bell's and US West's proposals to adjust their existing PCIs for costs they expect to incur in the future because it is difficult for a LEC to project accurately what its work force reduction expenses will be. Therefore, says MCI, the LECs should book their OPEB expenses, just as *RAO Letter 24* requires, when the amounts have actually been funded. MCI contends that under this method, the LECs will be ensured of being compensated for actual OPEB expenses.[14]

7. MCI further argues that Pacific Bell and US West do not clearly state in their transmittals the basis for assuming their VEBA funds earns 8.5 percent interest and their OPEBs funds earns 9 percent interest. MCI contends that these companies have the ability to earn more than 9 percent on these funds.[15] In addition, MCI asks the Commission to review the amount of OPEBs cost Pacific Bell and US West allocated to nonregulated activities and to activities "subject-to-separations."[16] MCI next argues that even if the Commission does not apply *RAO Letter 24* to OPEB expenses, the potential still exists for a "double-count" of OPEBs through the GNP-PI adjustment in the price cap formula.[17] Finally, says MCI, Pacific Bell and US West continue to rely on the same facts here to support OPEB exogenous cost treatment as they used to support OPEB costs currently under investigation in CC Docket No. 94-157. MCI argues that the Commission should therefore suspend and investigate these transmittals as well.[18]

Replies

8. In their replies, Pacific Bell and US West contend that the Commission has ordered the use of SFAS-106 accrual accounting for OPEB costs and that *RAO Letter 24* has no bearing on this requirement. According to Pacific Bell, *RAO Letter 24* states that accounting for work force restructuring is an exception to the Commission policy that requires conformance with Generally Accepted Accounting Procedures and Part 32 of the Commission's rules, 47 C.F.R. Part 32.[19] US West states that it is accounting for OPEB costs in accordance with *RAO Letter 20* [20] which provides specific guidance as to how the effects of SFAS-106 should be recorded on a carrier's books for regulatory purposes.[21] In addition, US West denies that its Transmittal No. 584 contains any costs classifiable as restructuring charges under *RAO Letter 24*. Rather, US West states, the SFAS-106 costs included in Transmittal No. 584 are the incremental costs of accruals which have been made on a routine basis in accordance with all applicable Commission accounting requirements.[22]

9. Pacific Bell and US West further contend that their projected returns on their respective VEBA and OPEB funds are generally accepted as reasonable projected returns on a mixed portfolio of major stocks and investment grade bonds.[23] US West maintains in addition that a 9 percent rate of return on SFAS-106 plan assets is appropriate and is used by other companies.[24] Pacific Bell and US West also state that they properly allocated the amount of OPEBs costs allocated to nonregulated activities and activities subject-to-separations.[25] In addition, U S West contends that its allocation of 5 percent of OPEB expenses to nonregulated operations comports with Part 64 of the Commission rules and, finally, that exogenous treatment of SFAS-106 costs will not result in double-counting through the GNP-PI adjustment in the price cap formula.[26]

IV. DISCUSSION

10. We have reviewed Pacific Bell Transmittal No. 1773 and US West Transmittal No. 584, supporting documents and pleadings. We find that the issues raised by these two transmittals are the same as the issues under investigation in CC Docket No. 94-157. As indicated above, Pacific Bell and US West state that they are proposing to revise their interstate access rates to reflect an adjustment of their exogenous costs for SFAS-106. While the Court has ordered the Commission to grant exogenous treatment of these postemployment benefits, the question of the specific amount eligible for exogenous treatment is subject to inves-

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[9] *Id.* at 1-2 to 1-3.
[10] *Id.* at 1-3 to 1-4.
[11] RAO Letter 24, "Accounting for Work Force Reduction Programs", 9 FCC Rcd 1676 (Com. Car. Bur., A and A Div. 1994) (*RAO Letter 24*).
[12] MCI Petition at 1-2.
[13] *Id.* at 8.
[14] *Id.*
[15] *Id.* at 10.
[16] MCI Petition at 10-11.
[17] GNP-PI refers to the Gross National Product Index minus a productivity factor. GNP-PI is used to calculate the annual PCI adjustment made by LECs to account for inflation in the economy. *See* Section 61.45 of the Commission's Rules, 47 C.F.R. § 61.45; Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, 6 FCC Rcd 2637, 2641 (1991) (*LEC Price Cap Reconsideration Order*).
[18] MCI Petition at 12.
[19] Pacific Bell Reply at 2-3.
[20] RAO Letter 20, "Accounting for Work Force Reduction Programs," 9 FCC Rcd 1676 (Com. Car. Bur. Aand A Div. 1994).
[21] US West Reply at 3-4.
[22] *Id.*
[23] Pacific Bell Reply at 4; US West Reply at 4.
[24] US West Reply at 4.
[25] Pacific Bell Reply at 4; US West Reply at 4.
[26] US West Reply at 9-10.

tigation in CC Docket No. 94-157. Therefore, we are suspending the two transmittals and including the issues presented therein in CC Docket No. 94-157.

V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revised rates set forth in Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1773 and U S West Tariff F.C.C. No. 5, Transmittal No. 584 ARE SUSPENDED for one day from the current effective date and an investigation of those rates is included in CC Docket Nos. 94-157. Pacific Bell and U S West SHALL FILE supplements reflecting this suspension no later than five days from the release of this Order and should cite the "DA number" of this Order as the authority for making this tariff filing.

12. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i), 204 (a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, Pacific Bell and U S West SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are the subject of this investigation.

13. IT IS FURTHER ORDERED that Pacific Bell and US West SHALL INCLUDE STATEMENTS in all subsequent transmittals revising rates indicating whether, and to what extent, the price change is predicated upon the exogenous cost claim set forth in Transmittal Nos. 1773 and 584, respectively.[27]

14. IT IS FURTHER ORDERED that the petition to suspend and investigate Pacific Bell Transmittal No. 1773 and U S West Transmittal No. 584 filed by MCI Telecommunications Corporation IS GRANTED to the extent discussed above and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Geraldine A. Matise
Chief, Tariff Division
Common Carrier Bureau

[27] We anticipate that any such transmittals will be suspended for one day, included in this investigation, and made subject to an accounting order.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Novato Cable Company CUID No. CA0107
Novato, California

Order Denying Jurisdiction

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 1995; Released: April 4, 1995

By the Deputy Chief, Cable Services Bureau:

1. In this Order we dismiss complaints against the price Novato Cable Company d/b/a Chambers Cable ("Operator") was charging for its cable programming service ("CPS") tier in Novato, California, CUID No. CA0107, on the ground that the complaints concern rates that are outside the jurisdiction and authority of this Commission. As explained below, the Commission regulates rates for CPS only, and then only upon filing of a valid complaint. Our review reveals that the complaints filed against Operator, while asserting that they challenge CPS rates, challenge only rates for basic service, not for CPS. The complaints therefore do not trigger the Commission's jurisdiction, and are accordingly dismissed.

2. The Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992")[1] distinguishes among basic cable service, premium cable service, and cable programming service.[2] The basic service tier is the minimum package of cable service that a consumer can buy. Except in limited circumstances, the Commission does not have jurisdiction over rates for the basic service tier, and cannot act upon complaints concerning rates for that tier. Premium cable service consists of channels that are paid for individually (per-channel) or per-program. By statute, these channels are not subject to rate regulation.[3] CPS includes all video programming that is not on the basic service tier which the operator offers as a package of channels. Rates for CPS tiers are subject to regulation by the Commission in response to a valid complaint.

3. In this case, Operator submitted a channel line-up and rate card which showed that it offered only one tier of cable service.

4. The complaints under consideration here were filed with the Commission on FCC Forms 329. FCC Form 329 is used by subscribers or local franchising authorities wishing to lodge with the Commission a complaint about an operator's CPS rates. The form is entitled "Cable Programming Service Rate Complaint." While the form is designed for use in challenging CPS tier rates, the definition of CPS tier rates is not made clear on the face of the form and it is possible that someone might complete the form without understanding the difference between basic tier rates, premium service rates, and CPS tier rates.

5. We have examined the complaints and Operator's submissions, and we conclude that the complaints challenge only basic rates, not CPS rates. Although the complainants indicate that the rates challenged violate the Commission's rules, the specific information provided by the complainants indicates that only basic rates are at issue. When only basic rates are being challenged, the complaint should properly be brought to the attention of the local franchising authority in the first instance, and not filed with this Commission. If a complaint does in fact challenge CPS rates, the complainant may file a petition for reconsideration providing information adequate to support his challenge.

6. Accordingly, IT IS ORDERED, pursuant to Section 623(a)(2)(A) and (B) of the Communications Act of 1934, as amended, 47 U.S.C. §543(a)(2)(A) and (B), that the complaints filed prior to May 15, 1994, against the cable programming service price charged by Novato Cable Company d/b/a Chambers Cable, CUID No. CA0107, ARE DISMISSED.

7. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

[1] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (Cable Act of 1992).

[2] Cable Act of 1992, Section 602, 47 U.S.C. § 522.

[3] Cable Act of 1992, Section 623(a)(1), 47 C.F.R. § 543(a)(1).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Colony Cablevision of Southeastern Massacusetts, Inc.	CUID No. MA0100, Dartmouth MA

Benchmark Filing to Justify Cable Programming Service Rate

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 1995; Released: April 4, 1995

By the Deputy Chief, Cable Services Bureau:

1. Here we consider a complaint about the price Colony Cablevision of Southeastern Massachusetts, Inc. ("Operator") was charging for its cable programming service ("CPS") tier in the community referenced above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operator asserts that its monthly CPS price is justified by its benchmark filing because this price is less than or equal to the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.[11]

5. ACCORDINGLY, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint referenced herein against the cable programming service price charged by Operator in the community referenced above IS DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Service Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TCI Cablevision of Northwestern Ohio, Inc.	CUID Nos. OH0207 (Archbold), OH0208 (Stryker), OH0354 (Pulaski), OH0387 (Center), OH0411 (Montpelier In), OH0508 (Edgerton In), OH0781 (Montpelier Out), OH0933 (Edgerton Out) and OH0779 (Bryan/Evansport)

Benchmark Filings to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 1995; Released: April 4, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the price that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the communities designated above. Operator has chosen to attempt to justify its price through benchmark showings on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. The first valid CPS complaints in each of the franchise areas which are the subject of this Order were completed and served on Operator and received by the Commission on the dates set forth onP Appendix A. Operator filed FCC Form 393 in response; Operator has also filed amended and supplemental Form 393 filings, most recently on May 27, 1994.[11]

5. Operator asserts that its monthly CPS tier price of $10.34 is justified by its benchmark filings because its price is lower than or equal to the maximum permitted charge as calculated in the filings. Upon review of Operator's Form 393 filings, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. The 1992 Cable Act requires operators to fully unbundle equipment and installation costs from programming costs.[12] The Commission's regulations implement Congress's directive by requiring operators to establish an equipment basket.[13] Section 76.923(c) of the Commission's regulations specifically states that equipment basket costs shall include "the direct and indirect material and labor costs of providing, leasing, installing, repairing, and servicing customer equipment." In its Order adopting rate regulations, the Commission amplified this regulation by stating

[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"),* the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS price under the new regulations. *See* para. 3, *infra.* Further, to the extent that the price as of March 31, 1994 is found to be excessive, reductions in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which are is as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended,* 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration,* 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration,* 9 FCC Rcd at 4189 n.195.

[11] For example, Operator filed amended FCC Forms 393 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally. Cable Operators' Rate Justification Filings, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] 47 U.S.C. § 543(b)(3).

[13] 47 C.F.R. § 76.923(b).

that "[t]he basket will include an allocation of all those system joint and common costs that service installation, leasing, and equipment repair share with other system activities, excluding general system overhead."[14] When completed correctly Part III of FCC Form 393 unbundles equipment costs from programming costs.

b. Operator, however, has not properly completed Part III of its FCC Form 393s and thus has not completely unbundled equipment and installation costs from programming costs as directed by the 1992 Cable Act and the Commission's regulations. Specifically, on Schedule A of Part III Operator has not reported any maintenance facility cost for installations and service of customer leased equipment, and on Schedule B it has not reported any costs for utilities. The lack of maintenance facility and utility costs might be correct if Operator's Schedule B allocations reflected that contract or third-party labor was performing all equipment installations and repairs. The allocations that Operator makes in its Schedule B Analysis, however, indicate that its own employees performed customer equipment installation and maintenance.

c. Not only are Operator's Schedule B allocations inconsistent with not having any maintenance facility costs, its allocations are also inconsistent with the argument that the repair of converters and remotes was performed off premises by a third party. If this statement were true, then there should be an allocation for the cost of third-party or contract labor. Operator's Schedule B Analyses, however, do not allocate any contract labor to customer equipment installation and maintenance.

d. Operator has included on its Schedule B Analysis an entry of $140.50 for "Converter Maintenance." This entry, however, further indicates that Operator has not fully unbundled its equipment costs from its regulated service costs. In its Part III, Step C, Line 9 explanation, Operator states that it devoted 528 hours to maintenance and service of remotes and converters.[15] This number of hours allocated to maintenance and service of remotes and converters is inconsistent with having a converter maintenance cost of $140.50. Even assuming that $140.50 is intended to represent only Operator's labor costs, this would indicate a cost to Operator of only $0.26 per hour, clearly an implausible figure. Thus, $140.50 cannot represent all of Operator's converter maintenance costs, and there must remain costs related to installations and service of customer leased equipment that Operator has not included on Form 393, Part III.[16]

e. Operator has not justified its Part III allocations. The Commission has repeatedly stated that where an operator does not provide adequate information to justify its rate, the Commission will set the maximum permitted rate based on the best evidence available to it.[17] Simply put, Operator cannot be permitted to delay subscriber refunds by failing to provide information that is needed to determine a maximum permitted rate. Since Operator has not justified its Part III allocations and has not calculated an acceptable figure for unbundling equipment and installation costs from programming costs, we must impute an estimated equipment cost figure. We have determined based on the best evidence available to us at this time that Operator's Part II, Worksheet 3, Line 303 entry should be $0.060 of installation and customer equipment costs per subscriber per channel. We have derived this figure by analyzing a sample of other operators' FCC Form 393 filings, including both filings as to which we have already issued orders and filings that are currently under review, and we have observed that generally operators have an average unbundling figure of $0.06 per subscriber per channel.[18] We have further determined that in order to yield an unbundling figure of $0.060 per subscriber per channel, Operator must have incurred $13,670.10 of installation and customer equipment costs, and we have therefore entered this figure on Part II, Worksheet 1, Line 104 and Part II, Worksheet 3, Line 301.[19] While we recognize that this is not an ideal way to determine the correct amount of costs to unbundle and thus to derive a maximum permitted CPS rate, it is the only approach available to us where an operator does not supply sufficient information to justify its price.

f. Because of this error, we conclude that Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. We will therefore set a maximum permitted price for this tier, incorporating the adjustment discussed above. In doing so, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheets 1 and 4, on the basis of the most accurate data currently available for the

[14] Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 at 5815, ¶ 295 (1993) (footnote omitted). *See also* First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164 at 1190, ¶ 47 (1993).

[15] *See also* Operator's FCC Form 393s at Part III, Line 9 and Line 16.

[16] We also note that Operator has failed correctly to gross-up its taxes on Schedules A and C. If, as in other communities, Operator is charging a wire maintenance fee we would expect to see these costs reflected in Operator's rate justification filings. Both of these facts provide additional evidence that Operator has not fully unbundled its equipment costs from its programming costs, and our calculation of an imputed equipment cost figure is intended to correct for any distortion of Operator's permitted rates that may be caused by these errors.

[17] *See* Third Order on Reconsideration, MM Docket Nos. 92-266 and 92-262, FCC 94-90, 9 FCC Rcd 4316 at 4348, ¶ 90 (1994); Cable Operators' Rate Justification Filings, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[18] *Cf.* United Video Cablevision, Inc ., CUID Nos. MA0333 and MA0334, DA 94-1144, at ¶10 (b) n.24 (Cab. Serv. Bur. released Nov. 9, 1994) (utilizing observed industry average depreciation lives where operator without explanation departed substantially from industry norms in cost-of-service justification).

[19] This adjustment to Worksheet 1 has the effect of causing Operator to calculate its permitted rate from Form 393, Part II, Worksheet 2 rather than Worksheet 1. However, Operator has not completed Worksheet 2 of Form 393. Therefore, we have computed Worksheet 2 by using data supplied by Operator on its Form 1200 filing.

date for whichOperator filed.[20] On its amended Form 393s, Operator calculated the Inflation Adjustment Factor as of the end of October 1993 using data released on August 31, 1993. On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through October 1993, the base date Operator used in justifying its rates for all the franchise areas under consideration in this Order, of 1.030.

6. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rate it was charging during the period in question. Operator's showing justifies a maximum reasonable CPS tier price of $9.73 (plus franchise fee) for the period from the filing of the earliest complaint in each franchise area (as set forth in Appendix A) to May 14, 1994.[21]

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints referred to in Appendix A against the cable programming service price charged by Operator in the areas referenced in the caption and at Appendix A herein, and all other complaints in these franchise areas related to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the communities shown in Appendix B that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A) [22] to May 14, 1994 which exceeded $9.73 (plus franchise fee) per month, plus interest to the date of the refund.

9. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

10. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to the communities listed herein, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted price (plus franchise fee).[23]

11. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filings required above, a price that reflects the reduction in the CPS rate determined in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
OH0207	10/18/93	10/14/93
OH0208	10/18/93	10/14/93
OH0354	10/18/93	10/14/93
OH0387	10/18/93	10/14/93
OH0411	10/18/93	10/14/93
OH0508	11/22/93	10/14/93
OH0781	11/22/93	10/14/93
OH0933	10/18/93	10/14/93
OH0779	10/18/93	10/14/93

[20] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[21] This finding is based solely on the representations of Operator and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[22] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

[23] We reserve the right to make further adjustments to Operator's price for the period after May 14, 1994, upon completion of our review of Operator's Form 1200 filings.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

V Cable, Inc. CUID No. OH0746
City of Westlake, Ohio

Benchmark Filing To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 10, 1995; Released: March 13, 1995

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider a complaint about the price V Cable, Inc. d/b/a Cablevision was charging for its cable programming service ("CPS") tier in the City of Westlake, Ohio, CUID No. OH0746. Cablevision has attempted to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Cablevision's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The complaint was completed and served on Cablevision and filed with the Commission on February 25, 1994.

5. Cablevision attempted to justify its CPS price through an FCC Form 393 filed on April 1, 1994.

III. DISCUSSION

6. Cablevision asserts that its monthly CPS tier price of $13.38 per subscriber is justified by its benchmark filing because its price is lower than the maximum permitted charge as calculated in the filing. Upon review of Cablevision's Form 393, we have found no apparent errors that would require a recalculation of Cablevision's maximum permitted CPS price.

IV. CONCLUSIONS

7. Upon review of the record herein, we conclude that Cablevision has demonstrated that $13.38 (plus franchise fee) was a reasonable CPS tier price in CUID No. OH0746 for the period from February 25, 1994 to May 14, 1994.[11]

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint filed on February 25, 1994 against the cable programming service price charged by V Cable, Inc. d/b/a Cablevision in the City of Westlake, Ohio, CUID No. OH0746, IS DENIED TO THE EXTENT INDICATED HEREIN.

9. IT IS FURTHER ORDERED that the benchmark filing submitted by V Cable, Inc. d/b/a Cablevision for the City of Westlake, Ohio, CUID No. OH0746, for the period from February 25, 1994 to May 14, 1994, justifies a price of $13.38 per month (plus franchise fee) for V Cable, Inc. d/b/a Cablevision's cable programming service tier.

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Cablevision has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Cablevision implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of Cablevision listed in paragraph 5, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 10, 1995

Released: March 13, 1995

IN REPLY REFER TO:
DA 95-463

Mr. Michael Bresnan
Director of Operations
Bresnan Communications Company
709 Westchester Avenue
White Plains, NY 10504

Dear Mr. Bresnan:

This is in reference to your letter on behalf of Bresnan Communications Company ("Bresnan") dated November 12, 1993, with respect to a complaint filed on October 13, 1993, against the price Bresnan was charging for cable programming service in Spalding Township, Michigan, CUID No. MI1049. In that letter, you state that Bresnan is not required to justify its rates prior to May 15, 1994, because Bresnan's Spalding Township, Michigan system has fewer than 1,000 subscribers. Based on the information you have provided, it appears that the Spalding Township, Michigan system qualifies as a "small system" pursuant to 47 C.F.R. § 76.901(c), and was therefore exempt from rate regulation until May 15, 1994.

We will rule at a later date on Bresnan's justification under the Commission's revised rate regulations of its cable programming service rates in Spalding Township, Michigan beginning May 15, 1994.

Should you have any questions regarding this letter, please contact Estella Salvatierra at (202) 416-0958.

Sincerely,

Gregory J. Vogt
Deputy Chief
Cable Service Bureau

cc: Spalding Township, Michigan

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 10, 1995

Released: March 13, 1995

IN REPLY REFER TO:
DA 95-464

Mr. Michael Bresnan
Director of Operations
Bresnan Communications Company
709 Westchester Avenue
White Plains, NY 10504

Dear Mr. Bresnan:

This is in reference to your letter on behalf of Bresnan Communications Company ("Bresnan") dated November 12, 1993, with respect to a complaint filed on October 8, 1993, against the price Bresnan was charging for cable programming service in Kinross Charter Township, Michigan, CUID No. MI1176. In that letter, you state that Bresnan is not required to justify its rates prior to May 15, 1994, because Bresnan's Kinross Charter Township, Michigan system has fewer than 1,000 subscribers. Based on the information you have provided, it appears that the Kinross Charter Township, Michigan system qualifies as a "small system" pursuant to 47 C.F.R. § 76.901(c), and was therefore exempt from rate regulation until May 15, 1994.

We will rule at a later date on Bresnan's justification under the Commission's revised rate regulations of its cable programming service rates in Kinross Charter Township, Michigan beginning May 15, 1994.

Should you have any questions regarding this letter, please contact Estella Salvatierra at (202) 416-0958.

Sincerely,

Gregory J. Vogt
Deputy Chief
Cable Service Bureau

cc: Kinross Charter Township, Michigan

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 10, 1995

Released: March 13, 1995

IN REPLY REFER TO:
DA 95-465

Mr. Michael Bresnan
Director of Operations
Bresnan Communications Company
709 Westchester Avenue
White Plains, NY 10504

Dear Mr. Bresnan:

This is in reference to your letter on behalf of Bresnan Communications Company ("Bresnan") dated November 12, 1993, with respect to a complaint filed on October 15, 1993, against the price Bresnan was charging for cable programming service in Mackinac Island, Michigan, CUID No. MI1745. In that letter, you state that Bresnan is not required to justify its rates prior to May 15, 1994, because Bresnan's Mackinac Island, Michigan system has fewer than 1,000 subscribers. Based on the information you have provided, it appears that the Mackinac Island, Michigan system qualifies as a "small system" pursuant to 47 C.F.R. § 76.901(c), and was therefore exempt from rate regulation until May 15, 1994.

We will rule at a later date on Bresnan's justification under the Commission's revised rate regulations of its cable programming service rates in Mackinac Island, Michigan beginning May 15, 1994.

Should you have any questions regarding this letter, please contact Estella Salvatierra at (202) 416-0958.

Sincerely,

Gregory J. Vogt
Deputy Chief
Cable Service Bureau

cc: City of Mackinac Island, Michigan

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMCAST CABLEVISION OF NEW HAVEN, INC.	New Haven, CT Hamden, CT West Haven, CT
Request for Stay of Local Rate Orders (Docket Nos. 93-12-16, 94-06-26) of the State of Connecticut Department of Public Utility Control; and	
COMCAST CABLEVISION OF GROTON, INC.	Groton, CT Ledyard, CT Stonington, CT
Request for Stay of Local Rate Orders (Docket Nos. 93-12-18, 94-06-28) of the State of Connecticut Department of Public Utility Control	Voluntown, CT North Stonington, CT
COMCAST CABLEVISION OF CLINTON, INC.	Clinton, CT Deep River, CT Essex, CT
Request for Stay of Local Rate Orders (Docket Nos. 93-12-17, 94-06-27) of the State of Connecticut Department of Public Utility Control	Chester, CT Killingworth, CT Haddam, CT Durham, CT Old Saybrook, CT Westbrook, CT

CONSOLIDATED ORDER

Adopted: March 10, 1995; Released: March 13, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On January 27, 1995, Comcast Cablevision of New Haven, Inc., Comcast Cablevision of Groton, Inc. and Comcast Cablevision of Clinton, Inc. (collectively, "Comcast") timely filed a "Consolidated Request for Stay of Rate Decision of the Connecticut Department of Public Utility Control." Each company is subject to two local cable rate orders issued by the State of Connecticut Department of Public Utility Control ("DPUC"). Thus a total of six local rate orders are at issue in this matter.[1] The six orders were issued by the DPUC on December 29, 1994.[2] The companies included with the consolidated stay request a Motion to Accept Consolidated Request for Stay. The companies maintain that the six local rate proceedings and orders are substantially identical and concern the same issues. They maintain, therefore, that it would be in the public interest to address the stay requests on a consolidated basis.[3] In preparing this order, we have reviewed the pleadings filed in the Consolidated Request for Stay and have determined that the six local rate proceedings and decisions are sufficiently similar to justify the joint resolution of all of the issues raised by the parties in a single consolidated order. We find that this consolidation will not prejudice any of the parties and will serve the interests of administrative efficiency.

2. The six DPUC rate orders at issue derive from the DPUC's proceedings regarding the basic cable rates charged by the three companies.[4] The DPUC proceedings cover the companies' rates in effect for the period from September 1, 1993 to May 15, 1994, and the period after May 15, 1994. In its orders, the DPUC refers to these time periods as "Phase I" and "Phase II." Each company thus has a Phase I and a Phase II decision. In the DPUC rate proceedings, the companies elected to use the cost of service approach in order to justify rates higher than those that would be justified under the benchmark process.

3. The DPUC conducted extensive cost of service proceedings and issued six comprehensive and detailed decisions. In each of the decisions at issue here, the DPUC found that the company's basic service rate and associated installation and equipment charges were above the company's costs, and ordered the company to reduce its rates and refund or credit subscribers for the overcharges levied since September 1, 1993. Comcast states that the ordered refunds total more than $11 million for the three companies combined.[5] The DPUC orders require that Comcast implement the rate reduction on or before March 1, 1995. Comcast seeks a stay of the local rate orders pending the resolution of Comcast's appeals on the merits. The DPUC has not filed an opposition to Comcast's stay request.

II. STANDARD OF REVIEW

4. The Commission evaluates petitions for stays under well-settled principles. To support a stay, a petitioner must demonstrate: (1) that it is likely to prevail on the merits; (2) that it will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors

[1] The local rate orders in Docket Nos. 93-12-16 and 94-04-26 pertain to Comcast Cablevision of New Haven, Inc.; the local rate orders in Docket Nos. 93-12-17 and 94-06-27 pertain to Comcast Cablevision of Clinton, Inc.; and the local rate orders in Docket Nos. 93-12-18 and 94-06-28 pertain to Comcast Cablevision of Groton, Inc.

[2] On January 30, 1995, the companies filed a Consolidated Appeal of the six DPUC rate orders.

[3] Motion to Accept Consolidated Stay Request at i-2.

[4] Under the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service and associated equipment. *See* Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(b), 47 U.S.C. § 543(b).

[5] Stay Request at iii.

the granting of a stay.[6] As discussed below, resolution of this stay petition centers primarily on the strength of Comcast's argument regarding the third prong of this test.

III. DISCUSSION

5. The Commission's rules permit operators to implement refunds in either of the following methods: (1) by returning overcharges directly to those subscribers who actually paid the overcharges; or (2) by means of a prospective percentage reduction in the rates for the basic service tier or associated equipment for current subscribers via a specifically identified, one-time credit.[7] Thus, the Commission's rules are structured so that individuals who were actually overcharged might not receive refunds in the future. Thus, a delay in the implementation of the refunds owed by Comcast will not harm any interested party, since if Comcast must implement refunds, it can choose to do so by way of credits to the then-current class of subscribers.

6. A stay of the local rate orders would prevent Comcast from being subjected to the irreparable economic harm of issuing any refunds to subscribers that it could not later recoup. Accordingly, we will grant Comcast's Consolidated Request for Stay, pending the resolution of Comcast's Consolidated Appeal on the merits.

7. Given our findings herein, and the fact that the DPUC has not opposed Comcast's stay requests, we will grant Comcast's request that the DPUC orders in the above-referenced proceedings be stayed pending our full review of this case on the merits. During the period of this stay, Comcast is ordered to deposit in an interest-bearing escrow account the total amount of money that the DPUC has ordered Comcast to refund to its customers. Alternatively, Comcast may elect to post a bond for the benefit of the DPUC. The amount of the bond shall be the total amount of money that the DPUC has ordered Comcast to refund to its customers, plus interest on that amount for a twelve (12) month period from the date of this Order. The bond shall provide that if Comcast is unable to fulfill its refund obligations for any reason, then the surety will fulfill that obligation to the DPUC, on behalf of Comcast's subscribers.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that Comcast's Motion to Accept Consolidated Request for Stay IS GRANTED.

9. IT IS FURTHER ORDERED that the Consolidated Request for Stay filed by Comcast is GRANTED pending the resolution of Comcast's Consolidated Appeal on the merits.

10. IT IS FURTHER ORDERED that the total amount of money that the DPUC has ordered Comcast to refund to its customers SHALL BE PLACED by Comcast in an interest-bearing escrow account, OR SHALL BE SECURED by the posting of a bond for the benefit of the DPUC for the total amount of money that the DPUC has ordered Comcast to refund to its customers, plus interest on that amount for a twelve (12) month period from the date of this Order. Proof of Comcast's compliance with this Order shall be filed with the Commission within thirty (30) days of the release of this Order. Interest shall accrue, or be computed, at the prevailing U.S. Internal Revenue Service Rate for tax refunds and additional tax payments.

11. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules. 47 C.F.R. §0.321.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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[6] See *Wisconsin Gas Co. v. FERC*, 758 F. 2d 669, 673-74 (D.C. Cir. 1985) (per curiam); *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-43 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

[7] 47 C.F.R. §76.942(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Withdrawal of	CUID Nos. NY0132, NY0134,
FCC Form 329	NY0135, NY0137, NY0138,
Rate Complaints Against	NY0140, NY0251, NY0260,
NewChannels Corporation	NY0403, NY0983

MEMORANDUM OPINION AND ORDER

Adopted: March 14, 1995; Released: March 15, 1995

By the Deputy Chief, Cable Services Bureau:

1. In each of the communities noted above, at least one complainant has filed with the Commission a letter withdrawing his or her previously filed complaint alleging that the prices charged by NewChannels Corporation ("NewChannels") for cable programming service tier (CPS) services in its community were unreasonably high. Our jurisdiction to regulate CPS rates arises with the filing of a valid complaint against those rates. In some cases, no complaint remains against the operator in that community; these cases are listed at Attachment A. We will allow the withdrawal of these complaints, and our review of these filings will therefore be terminated. In other of the cases listed above, at least one valid complaint remains; these cases are listed at Attachment B. Although we will allow withdrawal of these complaints, our review of the filings will proceed.

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[1] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[2] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[3] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.

3. The Commission's original rate regulations took effect on September 1, 1993.[4] The Commission subsequently revised its rate regulations effective May 15, 1994.[5] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[6] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[7] In each case captioned above, the operator did file either an FCC Form 393 benchmark rate justification submission, or a cost of service rate justification submission.

4. This Commission has now received from at least one complainant in each of the captioned communities a letter stating that he or she wishes to withdraw his or her CPS rate complaint. Under our rules, this Commission's authority to regulate CPS cable rates arises when a valid complaint against those rates is filed.

5. In every case noted at Attachment A, the complainant withdrawing his or her complaint was the only complainant against this operator in this community. Our mandate is to "protect subscribers of any cable system that is not subject to effective competition from rates that exceed the rates that would be charged if such a system were subject to effective competition."[8] We have no reason to believe that any coersion or collusion underlies these withdrawals. Each complainant states that he or she is now satisfied that NewChannels is charging a reasonable rate for CPS service. We will accordingly allow these complainants to withdraw their complaints. Because our review of the rate justification showings is predicated on the existence of a rate complaint, and because in every case listed at Attachment A, the operator no longer faces a rate complaint, we are terminating our review of those filings.

6. In every case listed at Attachment B, we have also received a letter withdrawing a complaint. Although we are allowing withdrawal of the complaint as requested, in each of these cases, at least one valid complaint remains, so our analysis of the rate justification filings in those areas will proceed.

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that permission to withdraw the FCC Form 329 rate complaints against cable programming service rates in the above-noted communities IS GRANTED.

8. IT IS FURTHER ORDERED that the review of the rate justification filings listed at Attachment A IS TERMINATED.

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[1] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended,* 47 U.S.C. § 543(c) (1993) (Cable Act of 1992).

[2] 47 C.F.R. § 76.956.

[3] 47 C.F.R. § 76.956(b).

[4] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[5] *See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119 (1994) (*Benchmark Order):* 47 C.F.R. § 76.922(b).

[6] *See Benchmark Order,* 9 FCC Rcd at 4190, paras. 150-152.

[7] *Id.*

[8] Conference Report on the Cable Act of 1992, at 62. *See also,* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 (1993) *(Rate Order)* at 5669.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Deputy Chief, Cable Services Bureau

Attachment A

NewChannels CPS Complaint Withdrawals
(no valid complaints remain)

CUID Number	Local Franchising Authority	number of complaints withdrawn
NY0132	Town of Binghamton	1
NY0134	Town of Chenango	1
NY0135	Town of Conklin	2
NY0137	Town of Fenton	1
NY0138	Village of Johnson City	1
NY0251	Town of Maine, NY	1
NY0403	Town of Owego	1
NY0983	Town of Nanticoke	1

Attachment B

NewChannels CPS Complaint Withdrawals
(valid complaints remain)

CUID Number	Local Franchising Authority	date complaint(s) filed
NY0140	Village of Port Dickinson	1/11/94
NY0260	Town of Vestal	12/14/93, 7/7/94

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CHILLICOTHE CABLEVISION, INC.,
D/B/A DIMENSION CABLE SERVICES

Appeal of Local
Rate Order of City of
Washington Court House, OH

ORDER

Adopted: March 13, 1995; Released: March 14, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On August 25, 1994, Chillicothe Cablevision, Inc., d/b/a Dimension Cable Services ("Dimension"), the franchisee in the above-matter, filed a Petition for Review ("appeal") of a local rate order adopted by its franchising authority, the City of Washington Court House, Ohio ("the City").[1] The City filed no opposition to the appeal. On July 26, 1994, the City adopted its local rate order, based on the FCC Form 393[2] filed by Dimension, requiring Dimension to establish a new rate schedule for its basic service tier and associated equipment and installations and to issue refunds to subscribers for charges in excess of the newly established rates.[3] In its appeal, Dimension urges the Commission to vacate the City's rate order.

2. Dimension raises five separate issues in its appeal: (1) that the City unlawfully ordered subscriber refunds even though its authority to order refunds had expired; (2) that the City improperly imposed refund liability dating back to September 1992 and failed to follow the mathematical formula required by the Commission for calculating refunds; (3) that the City Council did not formally adopt the rate order; (4) that the City failed to disclose the basis for the rates set in the rate order; and (5) that the City incorrectly treated a package of a la carte channels as regulated offerings in issuing its rate order. Dimension claims that each of these actions resulted in a misapplication of the Commission's rate regulations and violated the 1992 Cable Act. Consequently, Dimension argues that the local rate order is defective on its face and must be vacated by the Commission.

3. Under our rules, rate orders made by local franchising authorities may be appealed to the Commission.[4] In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as there is a reasonable basis for that decision.[5] Therefore, the Commission will reverse a franchising authority's decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules in rendering its local rate order.[6] If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.[7]

II. DISCUSSION

A. Refund Liability

4. When a cable operator files either a benchmark or cost-of-service rate justification, the Commission's rules provide a franchising authority 30 days in which to review the rate filing before the proposed rates become effective.[8] In cases involving benchmark filings (i.e., filings based on FCC Form 393), a franchising authority may toll this deadline for an additional 90 days if it needs more time to review the filing, giving the franchising authority a total of 120 days to issue an order before the proposed rates go into effect.[9] At the end of the 120-day period (the original 30 days plus the additional 90 days), the proposed rates will go into effect if the franchising authority has not issued a rate decision.[10] The franchising authority, however, may still preserve its authority to order subscriber refunds based on the new rates by issuing an accounting order, directing the cable operator to keep an accurate account of its financial records.[11] If a franchising authority has not rendered a decision within the available 120-day review period and has not issued an accounting order before that period has expired, the franchising authority may not later order subscriber refunds under our rules.[12] We wish to be clear that

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[1] Along with its Petition for Review, Dimension also filed on August 25, 1994 a Petition for Stay Pending Review of the Rate Order. The City has not filed an opposition to the stay petition. Because we are resolving this dispute on the merits presented in the appeal, the petition for stay has been rendered moot.

[2] FCC Form 393 is the official form used by cable operators to determine whether their regulated rates for programming, equipment and installations were reasonable for the period beginning September 1, 1993 and ending May 15, 1994.

[3] Under the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service and associated equipment and installations. *See* Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(b), 47 U.S.C. § 543(b).

[4] *See* 47 C.F.R. § 76.944.

[5] *See* Report and Order and Further Notice of Proposed Rulemaking in MM Docket 92-266, 8 FCC Rcd 5631, 5731 (1993) (*"Rate Order"*); Third Order on Reconsideration in MM Dockets 92-262 & 92-266, 9 FCC Rcd 4316, 4346 (1994) (*"Third Recon. Order"*).

[6] *Id.*

[7] *Id.*

[8] *See* 47 C.F.R. § 76.933(a).

[9] *See* 47 C.F.R. § 76.933(b). In the case of a cost-of-service filing, the local franchising authority may extend the review period by 150 days. *Id.* This would give the local franchising authority a total of 180 days (the original 30 days plus the additional 150 days) to review the cost-of-service filing before the proposed rates would go into effect.

[10] *Id.*

[11] *See* 47 C.F.R. § 76.933(c).

[12] "If a franchising authority has availed itself of the additional 90 or 150 days permitted in paragraph (b) of this section, and has taken no action within these additional time periods, then

our rules provide that the issuance of an accounting orderis necessary only to preserve refund authority. A franchising authority that does not issue an accounting order before its allowable period of review expires may still prescribe rates and order a prospective rate reduction.

5. While we recognize that cable rate regulation is relatively new to all concerned parties, we must enforce both our substantive and procedural rules to maintain the integrity of the rate review process and to ensure consistency in decision-making. Just as it is important for cable operators to file their rate justifications in a timely manner, it is important that they be able to implement their proposed rates with as little delay as possible.[13] Our rules attempt to ensure that this concern is balanced against the need for franchising authorities to have adequate time to carefully scrutinize and evaluate an operator's rate filing. Therefore, our rules permit a franchising authority to toll the deadline for its review for 90 days in a benchmark filing and, if necessary, to issue an accounting order to preserve refund liability beyond that period.[14] Through these mechanisms, the franchising authority is given time to fully review a rate justification filing, while the cable operator is protected from having to operate in an uncertain regulatory environment for an indefinite period of time.[15] Absent a waiver granted by the Commission, both parties are bound by the deadlines provided in our rules. Although Dimension appears to have voluntarily participated in the rate review process beyond the official review period, this activity does not constitute a waiver of our procedural deadlines.

> [A] local franchising authority and a cable operator may not agree to waive a procedural deadline contained in the Commission's rules. A franchising authority and a cable operator that mutually agree that an extension of time would be desirable may petition for a waiver of the Commission's rules establishing deadlines for filing rate justifications.[16]

6. Because the City did not issue an accounting order before the conclusion of its review period, it lost the authority to order subscriber refunds. As a result of the City's failure to issue an accounting order, Dimension's second argument, in which it states that the City improperly imposed refund liability back to September 1992 and failed to follow the Commission's rate formula in calculating the refund liability, is rendered moot. We note, however, that, although Dimension will not be liable for the refunds ordered by the City with regard to its rates set under Form 393 in effect from September 1, 1993 until May 15, 1994,[17] this order has no effect upon the City's authority to rule on the reasonableness of Dimension's rates as set by the Form 1200 series, nor does it impact upon the City's authority to order subscriber refunds subsequent to May 15, 1994.

B. Formal Adoption of the Rate Order

7. Dimension alleges that the local rate order is invalid because it was never considered or adopted by the City Council, which Dimension claims is the lawful franchising authority, but instead was issued by the City Administrator. We have previously stated that a franchising authority may delegate its rate-making responsibilities to a subordinate entity if so authorized by state or local law.[18]

> Any such subordinate entity will be acting as the authorized agent of and at the will and pleasure of the franchising authority, and its actions will be subject to at least the implicit, if not explicit, ratification of the full franchising authority. We believe that because of the many demands placed on municipalities and other entities that serve as franchising authorities, such flexibility is necessary to better enable franchising authorities to implement and enforce the Commission's regulations within the time frames specified in our procedural rules.[19]

We have further stated that rate decisions need not be issued by resolution or ordinance, but may be made by letter or other form, so long as they meet public notice requirements.[20] Here, the City Administrator, a subordinate of the franchising authority, i.e., the City, has issued a rate order by way of a published letter on behalf of the City. This method appears to comport with our requirements in this regard. Furthermore, if local laws have been violated by this delegation of authority, the proper remedy would

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the proposed rates will go into effect at the end of the 90 or 150 day period, or existing rates will remain in effect at such times, subject to refunds if the franchising authority subsequently issues a written decision disapproving any portion of such rates, *provided, however,* that in order to order refunds, a franchising authority must have issued a brief written order to the cable operator by the end of the 90 or 150-day period permitted in paragraph (b) of this section directing the operator to keep an accurate account of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid." 47 C.F.R. § 76.933(c) (emphasis in the original).

[13] Franchise authority review of a cable operator's current rates for the basic service tier and accompanying equipment, and proposed increases in these rates, require expedition so that protracted proceedings and concomitant uncertainty do not injure an operator's ability to serve the community. *Report and Order,* 8 FCC Rcd at 5708.

[14] *Public Notice,* Questions and Answers on Cable Television Rate Regulation, Question No. 4 (released April 26, 1994).

[15] "We note that where a proposed rate increase goes into effect due to franchise authority inaction, or the authority fails to take any action regarding the reasonableness of current rates, the authority lacks the power to order refunds. If the authority wishes to retain the right to order such refunds, it must at minimum issue an order stating that it will need additional time to reach a decision on the merits." *Report and Order,* 9 FCC Rcd at 5711, n.314.

[16] *Public Notice,* Questions and Answers on Cable Television Rate Regulation, Question No. 19 (released May 6, 1994). Even if Dimension had been ordered by the City to resubmit its filing on an official FCC Form 393, the review period would have only been automatically tolled for an additional 14 days. *Third Recon. Order,* 9 FCC Rcd at 4349.

[17] If a cable operator has taken advantage of the refund deferral period set out in the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket 92-266, 9 FCC Rcd 4119, 4184-86 (1994) (*"Second Recon. Order"*), the period at issue could be as long as September 1, 1993 to July 14, 1994.

[18] *Third Recon. Order,* 9 FCC Rcd at 4339. We do not decide here whether the City was authorized by state or local law to delegate its rate-making responsibilities. The courts are the appropriate forum for deciding that particular question.

[19] *Id.*

[20] *Id.*

have to be found under local law.[21] Because final resolution of this issue may rest with an interpretation of applicable local law and not federal law, a state or local court is the appropriate forum to hear this matter. For this reason, we deny Dimension's petition on this issue.

C. Written Decision

8. Dimension also contends that the City's rate order should be remanded because it failed to disclose the basis for the rates set. The City's rate order was a one-page document, signed by the City Administrator, that stated the per-channel charge that Dimension was permitted to charge. The only piece of information relating to the City's rationale for setting the per-channel charge dealt with Dimension's a la carte package, discussed *infra*. The City did not state, nor does it appear from the record, that its rate-setting or refund decisions were based solely on its treatment of the a la carte package as a regulated tier. Moreover, the City did not state in the order what were Dimension's permitted charges for equipment and installation.

9. Dimension correctly notes that Commission rules require that the local franchising authority issue a written decision.[22] Moreover, where the franchising authority prescribes a rate, as the City did here, the written decision must affirmatively demonstrate why the operator's proposed rate is unreasonable and why the prescribed rate is reasonable.[23] It appears from the record below that the City's rate order did not comport with our rules in this area.[24] Therefore, we remand this case for further proceedings not inconsistent with this decision.

D. A la carte

10. Lastly, Dimension contends that the City improperly included in its total regulated channel count the channels offered in its a la carte package.[25] Beginning on August 31, 1993, Dimension began offering a package that consisted of four channels -- AMC, The Discovery Channel, The Nashville Network, and TNT. Dimension states that its basic-only subscribers received the a la carte package at no additional cost.[26] The record also indicates that all of its cable programming services subscribers received the package at no charge.[27] All of Dimension's subscribers, therefore, apparently received all channels in the package at no additional cost and no subscriber received any less than all four channels in the package. Dimension in fact indicates that it lacked the technology to offer the four channels in the package on an individual basis. The City ruled that because Dimension alleged that it lacked the resources to separate the purported a la carte service from the basic service tier, the City would treat the channels as a regulated tier. Dimension argues that the package was a legitimate a la carte offering, and that subscribers merely received a bonus, however temporary, pending installation of the equipment necessary to prevent unauthorized viewing.

11. Dimension's package of four channels that it alleges is an a la carte package and thus not subject to regulation is not a true a la carte package and does not even meet the threshold requirement that channels be offered on a per channel basis. Our rules required that Dimension offer the channels in the package on an individual basis as well as a collective basis in order to be categorized as an unregulated a la carte package.[28] Dimension did not, however, offer the four alleged a la carte channels individually to its subscribers. Its claim that the channels are not regulated is, therefore, not supported by our rules. Consequently, Dimension's alleged a la carte package is composed of regulated channels for purposes of its 393 filing. Dimension's appeal of the City's order holding that the four channels in Dimension's alleged a la carte package are regulated channels is denied. III. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that the appeal of the local rate order adopted by the City of Washington Court House, Ohio with respect to Dimension Cable Service's refund liability and the necessity of providing a basis for the rates prescribed IS REMANDED to the local franchising authority for further proceedings consistent with this opinion.

13. IT IS FURTHER ORDERED that Dimension Cable Service's appeal with respect to formal adoption of the rate order by the City Council of the City of Washington Courthouse IS DENIED.

14. IT IS FURTHER ORDERED that Dimension Cable Service's appeal with regard to Dimension Cable Service's alleged a la carte package IS DENIED.

15. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules. 47 C.F.R. § 0.321.

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[21] *See* 47 C.F.R. § 76.944(a) ("The Commission shall be the sole forum for appeals of decisions by franchising authorities on rates for the basic service tier or associated equipment involving whether or not a franchising authority has acted consistently with the Cable Act or §§ 76.922 and 76.923. Appeals of ratemaking decision by franchising authorities that do not depend upon determining whether a franchising authority has acted consistently with the Cable Act or §§ 76.922 or 76.923, may be heard in state or local courts.")

[22] 47 C.F.R. § 76.936; *Rate Order*, 8 FCC Rcd at 5715-16.

[23] *Rate Order*, 8 FCC Rcd at 5723.

[24] *See* A-R Cable Services-ME, Inc., DA 95-75 (Jan.20, 1995).

[25] The 1992 Cable Act provides that per channel offerings do not fall within the definition of regulated cable programming services. Communications Act, § 623(l)(2), 47 U.S.C. § 543(l)(2). The Commission determined that collective offerings of individual channels or a la carte packages would be exempt from rate regulation if two conditions were met. *Rate Order* at 5836-37 and note 808. In the *Second Recon. Order* the Commission affirmed its prior view. It said that "we continue to believe that the public interest will be served by generally permitting non-regulated treatment of collective offerings of 'a la carte§ channels if the offering enhances consumer choice and does not constitute an evasion of rate regulation." *Second Recon. Order* at 4212. In this regard, the Commission retained the two-part test contained in the *Rate Order* for determining when we would refrain from regulating "a la carte packages." In addition, the Commission set out 15 guidelines to enable operators to better determine what collective offerings of "a la carte" channels will be considered "realistic service offerings." *Id.* at 4213.

[26] Appeal at 20.

[27] Letter from David Surgalski to Robert Wakefield at 2,3 (July 20, 1994).

[28] "Collective offerings of unregulated per-channel or per-program ("a la carte") video programming shall not be regulated if: . . . (2) the cable operator continues to provide the component parts of the package to subscribers separately in addition to the collective offering." 47 C.F.R. § 76.986(a)(2) (superseded January 1, 1995).

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

V Cable, Inc. CUID Nos. OH0967 and OH1272
Bedford Heights and
Granger Township, Ohio

Benchmark Filing To Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: March 14, 1995; Released: March 15, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the prices V Cable, Inc. d/b/a Cablevision ("Cablevision") was charging for its cable programming service ("CPS") tier in Bedford Heights, Ohio, CUID No. OH0969, and Granger Township, Ohio, CUID No. OH1272. Cablevision has chosen to attempt to justify its prices through benchmark showings on FCC Form 393. This Order addresses the reasonableness of Cablevision's prices only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first complete and timely CPS complaint in Bedford Heights, Ohio, CUID No. OH0967, was completed and served on Cablevision October 27, 1993 and received by the Commission on November 1, 1993. The first complete and timely CPS complaint in Granger Township, Ohio, CUID No. OH1272, was completed and served on Cablevision on October 8, 1993 and received by the Commission on October 12, 1993.

5. Cablevision filed its first FCC Form 393 for Bedford Heights, Ohio, CUID No. OH0967, on December 3, 1993, and filed an amended Form 393 on December 27, 1993. Cablevision filed its FCC Form 393 for Granger Township, Ohio, CUID No. OH1272, on January 27, 1994. Cablevision amended its justification on July 1, 1994, for CUID No. OH0967, in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally.[11] Cablevision amended its justifications for both areas on February 17, 1995, in response to a Commission letter which requested clarification of Cablevision's showing.[12]

III. BACKGROUND

6. Cablevision restructured its rates in an effort to comply with the Commission's Rules on September 1, 1993. In October 1993, Cablevision changed its channel line-up on Channel 37 by deleting HSN II, a satellite channel on the CPS tier, and adding WQHS, a non-satellite channel on the basic tier. On January 1, 1994, Cablevision again changed its channel line-up by moving Channel 17, a satellite chan-

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[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Cablevision has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Cablevision implemented its CPS prices under the new regulations. *See* para. 3, *infra*. Further, to the extent that the prices as of March 31, 1994 are found to be excessive, reductions in Cablevision's prices for the period after May 14, 1994 may be required to reflect the fact that Cablevision's prices during the earlier period, which are used as the starting point to calculate its prices for the prospective period, were unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] Letter from Peter G. Wolfe, FCC, to Chad G. Hume, Cablevision (Feb. 13, 1995).

nel on the CPS tier, to the basic tier. These changes in Cablevision's channel line-up were unaccompanied by any change in Cablevision's prices for its basic and CPS tiers. Cablevision completed Part II of Form 393 using its channel line-up as of October 1993. In Part I of Form 393, Cablevision performed alternative calculations using its number of channels as of September 1, 1993, and as of October 1993.

IV. DISCUSSION

7. Cablevision acknowledges that its CPS prices are higher than the maximum permitted price if Form 393 is calculated using the number of channels Cablevision offered as of October 1993.[13] Thus, Cablevision has failed to demonstrate that its prices for the CPS tier were not unreasonable.

8. Because Cablevision has failed to demonstrate that its prices for the CPS tier were not unreasonable, we will set prices for this tier. In doing so, we must recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the date that Cablevision should have filed Form 393 in each franchise area.[14] Our rules require a cable operator to respond to a complaint that is not returned by the Commission within 30 days after the complaint is served. 47 C.F.R § 76.956(c). Cablevision did not comply with this rule. Cablevision cannot be permitted an additional inflation adjustment simply because it filed Form 393 late.[15] On July 29, 1994, the Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate 1.030 as the Inflation Adjustment Factor through October 1993, the base date Cablevision should have used in justifying its rates.

9. This adjustment has the effect of yielding the maximum permitted monthly CPS tier price for each franchise area as of the initial date of regulation set forth in Appendix A.[16]

10. As described in paragraph 6, *supra*, on January 1, 1994, Cablevision moved Channel 17 from the CPS tier to the basic tier. Cablevision thus increased the rate charged for its service by reducing the number of channels available on the CPS tier without a consequent reduction in price. Cablevision failed to notify the Commission of the rate change and submit a revised rate justification as required by the instructions to Form 393.[17] To determine Cablevision's subsequent permitted per channel charges as of January 1, 1994, and thus Cablevision's maximum permitted prices, we rely on the Commission's Rules then in effect[18] and reduce the number of channels on the CPS tier on Form 393, Part I effective January 1, 1994 from 25 to 24. This adjustment has been reflected in Appendix A for the period after December 31, 1993.

V. CONCLUSIONS

11. Upon review of the record herein, we conclude that Cablevision's showing supports the maximum CPS tier prices set forth in Appendix A (plus franchise fee) for the periods set forth in Appendix A.[19] We further determine that we will order appropriate refunds pursuant to Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957, in order to reimburse subscribers for the amount they paid in excess of a reasonable price.

12. We further conclude that Cablevision must reflect in its FCC Form 1200 rate filings for the period after May 14, 1994 the fact that Cablevision's prices as of March 31, 1994 were unreasonable. We reserve the right to make further adjustments to Cablevision's prices for the period after May 14, 1994, upon completion of our review of Cablevision's FCC Form 1200 rate filings.

13. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint filed on November 1, 1993 against the cable programming service price charged by V Cable d/b/a Cablevision in Bedford Heights, Ohio, CUID No. OH0967, and the complaint filed on October 12, 1993 against the cable programming service price charged by V Cable, Inc. d/b/a Cablevision in Granger Township, Ohio, CUID No. OH1272, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

14. IT IS FURTHER ORDERED that the benchmark filings submitted by V Cable, Inc. d/b/a Cablevision with respect to Bedford Heights, Ohio, CUID No. OH0967, and Granger Township, Ohio, CUID No. OH1272, for the periods set forth in Appendix A justify the maximum

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[13] Cablevision asserts that when it initially restructured its monthly CPS tier prices on September 1, 1993, it had one additional CPS channel and one fewer basic tier channel. If Cablevision had computed Part I of Form 393 based on the number of channels offered on September 1, 1993, its prices would have been equal to or lower than the maximum permitted per-channel charge as calculated in the filings. However, as recognized by Cablevision, Form 393 must be completed using the number of channels offered by the operator as of the initial date of regulation.

[14] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[15] *See Times Mirror Cable Television of Orange County, San Clemente, California*, DA 94-1334 (Cab. Serv. Bur., released Nov. 29, 1994).

[16] In Granger Township, Ohio, CUID No. OH1272, this adjustment has the effect of causing Cablevision to calculate its permitted rate from Form 393, Part II, Worksheet 2 rather than Worksheet 1. However, Cablevision haas not completed Worksheet 2 of Form 393. Therefore, we have computed Worksheet 2 by using data supplied by Cablevision on its Form 1200 filing.

[17] 47 C.F.R. § 76.958. General Instruction 1 (on page 2) to FCC Form 393 clearly requires that while there is a complaint regarding CPS rates pending before the Commission, the cable operator must inform the Commission of any CPS rate increase and submit a revised Form 393.

[18] 47 C.F.R. § 76.922(c) (1993) (amended, effective May 15, 1994).

[19] This finding is based solely on the representations of Cablevision listed in paragraph 5, *supra*, and the modifications described in paragraphs 7 through 10, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

prices set forth in Appendix A (plus franchise fee) for V Cable, Inc. d/b/a Cablevision's cable programming service tier.

15. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that V Cable, Inc. d/b/a Cablevision shall refund to subscribers that portion of the amounts paid for cable programming service for the periods set forth in Appendix A[20] to May 14, 1994 which exceeded the maximum prices set forth in Appendix A (plus franchise fee) per month and was thus unreasonable, plus interest to the date of the refund.

16. IT IS FURTHER ORDERED that V Cable, Inc. d/b/a Cablevision shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

17. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(C), that V Cable Inc. d/b/a Cablevision shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to Bedford Heights, Ohio, CUID No. OH0967, and Granger Township, Ohio, CUID No. OH1272, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price in each franchise area set forth in Appendix A (plus franchise fee).

18. IT IS FURTHER ORDERED that V Cable, Inc. d/b/a Cablevision shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, prices that reflect the reductions in the CPS rates determined in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Appendix A

CUID No. 0967

Actual Rate	Maximum Reasonable Rate 11/1/93-12/31/93	Maximum Reasonable Rate 1/1/94-5/14/94
$13.83	$13.25	$12.67

CUID No. 1272

Actual Rate	Maximum Reasonable Rate 10/12/93-12/31/93	Maximum Reasonable Rate 1/1/94-5/14/94
$14.80	$13.15	$12.62

[20] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b). Consequently, the periods set forth in Appendix A begin with the date of the filing of the first valid complaint.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

V Cable, Inc. CUID Nos. OH0823, OH0969, OH0971, OH0993, OH1274

Brook Park, Northfield,
North Royalton, Independence,
and Brecksville, Ohio

Benchmark Filings To Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: March 14, 1995; Released: March 15, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the prices V Cable, Inc. d/b/a Cablevision ("Cablevision") was charging for its cable programming service ("CPS") tier in Brook Park, Ohio, CUID No. OH0823; Northfield, Ohio, CUID No. OH0969; North Royalton, Ohio, CUID No. OH0971; Independence, Ohio, CUID No. OH0993; and Brecksville, Ohio, CUID No. OH1274. Cablevision has chosen to attempt to justify its prices through benchmark showings on FCC Form 393. This Order addresses the reasonableness of Cablevision's prices only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first complete and timely CPS complaints in the franchise areas addressed in this Order were completed and served on Cablevision and received by the Commission on the dates set forth in Appendix A.[11]

5. Cablevision filed its FCC Forms 393 for the franchise areas addressed in this Order on the dates set forth in Appendix B. Cablevision amended its justifications on February 17, 1995, in response to a Commission letter which requested further clarification of Cablevision's amended showings.[12]

III. BACKGROUND

6. Cablevision restructured its rates in an effort to comply with the Commission's Rules on September 1, 1993. In October 1993, Cablevision changed its channel line-up on Channel 37 by deleting HSN II, a satellite channel on the CPS tier, and adding WQHS, a non-satellite channel on the basic tier. On January 1, 1994, Cablevision again changed its channel line-up by moving Channel 17, a satellite channel on the CPS tier, to the basic tier. These changes in

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[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Cablevision has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) ("*Second Order on Reconsideration*"), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Cablevision implemented its CPS prices under the new regulations. *See* para. 3, *infra*. Further, to the extent that the prices as of March 31, 1994 are found to be excessive, reductions in Cablevision's prices for the period after May 14, 1994 may be required to reflect the fact that Cablevision's prices during the earlier period, which are used as the starting point to calculate its prices for the prospective period, were unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] We note that in Brecksville, Ohio, CUID No. OH1274, the first valid CPS complaint was received by the Commission on April 4, 1994. This complaint constituted a timely correction under Section 76.955 of our rules, 47 C.F.R. § 76.955, of a previous timely complaint that had been returned by the Commission pursuant to 47 C.F.R. § 76.954. For this reason, the corrected complaint is timely even though it was filed after the expiration of the limitation periods set forth in 47 C.F.R. § 76.953.

[12] Letter from Peter G. Wolfe, FCC, to Chad G. Hume, Cablevision (Feb. 13, 1995).

Cablevision's channel line-up were unaccompanied by any change in Cablevision's prices for its basic and CPS tiers. Cablevision completed Part II of Form 393 using its channel line-up as of October 1993. In Part I of Form 393, Cablevision performed alternative calculations using its number of channels as of September 1, 1993, and as of October 1993.

IV. DISCUSSION

7. Cablevision acknowledges that its CPS prices are higher than the maximum permitted price if Form 393 is calculated using the number of channels Cablevision offered as of October 1993.[13] Thus, Cablevision has failed to demonstrate that its prices for the CPS tier were not unreasonable. Furthermore, upon review of Cablevision's Form 393 filings, we have found that Cablevision has not correctly calculated its maximum permitted prices as of the initial date of regulation and it is therefore appropriate to make the following adjustments to Cablevision's calculations in Form 393:

a. Cablevision's calculations for its rate-regulated channels as of the initial date of regulation (Form 393, Part II, Worksheet 1 and Form 393, Part I) count Channel 17 as a regulated satellite channel on the CPS tier. However, according to the channel line-ups submitted by Cablevision and the February 17, 1995 Letter provided by Cablevision,[14] Channel 17 was moved from the CPS tier to the basic tier before the filing of the first valid complaint in these franchise areas. The channels used in completing Form 393 should be those channels offered on the initial date of regulation for each franchise area.[15] Since the change in the use of Channel 17 occurred before any complaints were filed pertaining to these franchise areas, that change must be reflected in the channel counts.

b. In order to correct for the effect of the channel-counting error discussed above, we decrease the number of channels on the CPS tier on Part II, Worksheet 1, Line 102 and Part I of Form 393 from 26 to 25 for Brook Park, Ohio, CUID No. OH0823, and for Independence, Ohio, CUID No. OH0993; from 23 to 22 for Northfield, Ohio, CUID No. OH0969; from 22 to 21 for North Royalton, Ohio, CUID No. OH0971; and from 24 to 23 for Brecksville, Ohio, CUID No. OH1274. We also increase the number of channels on the basic tier on Part II, Worksheet 1, Line 102 from 14 to 15 for Brook Park, Ohio, CUID No. OH0823; from 12 to 13 for Northfield, Ohio, CUID No. OH0969; from 13 to 14 for North Royalton, Ohio, CUID No. OH0971, and Independence, Ohio, CUID No. OH0993; and from 11 to 12 for Brecksville, Ohio, CUID No. OH1274. These adjustments have the effect of reducing the number of CPS channels which is multiplied by the maximum per-channel rate on Form 393, Part I.

8. Because Cablevision has failed to demonstrate that its prices for the CPS tier were not unreasonable, we will set prices for this tier, incorporating the adjustments discussed above. In doing so, we must also recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the dates that Cablevision was required to file Form 393 in each franchise area.[16] On July 29, 1994, the Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992, 126.5 for the fourth quarter of 1993, and 127.5 for the first quarter of 1994. Using these GNP-PI figures, we calculate 1.039 as the Inflation Adjustment Factor through February 1994, the base date Cablevision should have used in justifying its rates for Brook Park, Ohio, CUID No. OH0823; Northfield, Ohio, CUID No. OH0969; North Royalton, Ohio, CUID No. OH0971; and Independence, Ohio, CUID No. OH0993; and 1.045 through April 1994, the base date Cablevision should have used in justifying its rate for Brecksville, Ohio, CUID No. OH1274.

9. These adjustments have the cumulative effect of yielding the maximum permitted monthly CPS tier price for each franchise area set forth in Appendix C.

V. CONCLUSIONS

10. Upon review of the record herein, we conclude that Cablevision's showing supports the maximum reasonable CPS tier price for each franchise area set forth in Appendix C, Column 2 (plus franchise fee) for the period from the filing of the earliest complaint in each franchise area (as set forth on Appendix A) to May 14, 1994.[17] We further determine that wep will order appropriate refunds pursuant to Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957, in order to reimburse subscribers for the amount they paid in excess of a reasonable price.

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[13] Cablevision asserts that when it initially restructured its monthly CPS tier prices on September 1, 1993, it had one additional CPS channel and one fewer basic tier channel. If Cablevision had computed Part I of Form 393 based on the number of channels offered on September 1, 1993, its prices would have been equal to or lower than the maximum permitted per-channel charge as calculated in the filings. However, as recognized by Cablevision, Form 393 must be completed using the number of channels offered by the operator as of the initial date of regulation.

[14] Letter from Chad G. Hume, Cablevision, to Peter G. Wolfe, FCC (Feb. 17, 1995).

[15] *See* n.13, *supra*.

[16] See 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis). Our rules require a cable operator to respond to a complaint that is not returned by the Commission within 30 days after the complaint is served. 47 C.F.R § 76.956(c). Cablevision did not comply with this rule. Cablevision cannot be permitted an additional inflation adjustment simply because it filed Form 393 late. *See Times Mirror Cable Television of Orange County, San Clemente, California*, DA 94-1334 (Cab. Serv. Bur., released Nov. 29, 1994).

[17] This finding is based solely on the representations of Cablevision listed in paragraph 5, *supra*, and the modifications described in paragraphs 7 and 8, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

11. We further conclude that, except for CUID No. OH1274, Cablevision must reflect in its FCC Form 1200 rate filings for the period after May 14, 1994 the fact that Cablevision's prices as of March 31, 1994 were unreasonable. We reserve the right to make further adjustments to Cablevision's prices for the period after May 14, 1994, upon completion of our review of Cablevision's FCC Form 1200 rate filings.

12. IT IS FURTHER ORDERED that the complaints referred to in Appendix A against the cable programming service prices charged by V Cable, Inc. d/b/a Cablevision in Brook Park, Ohio, CUID No. OH0823; Northfield, Ohio, CUID No. OH0969; North Royalton, Ohio, CUID No OH0971; Independence, Ohio, CUID No. OH0993; and Brecksville, Ohio, CUID No. OH1274, and all other complaints in these franchise areas related to the same prices, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

13. IT IS FURTHER ORDERED that the benchmark filings submitted by V Cable, Inc. d/b/a Cablevision with respect to Brook Park, Ohio, CUID No. OH0823; Northfield, Ohio, CUID No. OH0969; North Royalton, Ohio, CUID No. OH0971; Independence, Ohio, CUID No. OH0993; and Brecksville, Ohio, CUID No. OH1274 for the period beginning with the filing of the first valid complaint in each franchise area (as set forth in Appendix A) and ending on May 14, 1994 justify the maximum price in each franchise area set forth in Appendix C, Column 2 (plus franchise fee) for V Cable, Inc. d/b/a Cablevision's cable programming service tier.

14. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that V Cable, Inc. d/b/a Cablevision shall refund to subscribers that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A)[18] to May 14, 1994 which exceeded the maximum price for each franchise area set forth in Appendix C, Column 2 (plus franchise fee) per month and was thus unreasonable, plus interest to the date of the refund.

15. IT IS FURTHER ORDERED that V Cable, Inc. d/b/a Cablevision shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

16. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(C), that V Cable Inc. d/b/a Cablevision shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to Brook Park, Ohio, CUID No. OH0823; Northfield, Ohio, CUID No. OH0969; North Royalton, Ohio, CUID No. OH0971; and Independence, Ohio, CUID No. OH0993 for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price in each franchise area set forth in Appendix C, Column 2 (plus franchise fee).

17. IT IS FURTHER ORDERED that V Cable, Inc. d/b/a Cablevision shall place into effect, within 30 days after its submission of the revised Form 1200 filings required above, prices that reflect the reductions in the CPS rates determined in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
0823	2/25/94	2/25/94
0969	2/25/94	2/25/94
0971	2/23/94	2/23/94
0993	2/23/94	2/24/94
1274	4/4/94	4/4/94

Appendix B

CUID No.	Date Form 393 Filed
0823	3/29/94
0969	5/23/94
0971	4/12/94
0993	3/29/94
1274	7/5/94

Appendix C

CUID No.	Actual Rates	Maximum Reasonable Rates
0823	$13.72	$12.73
0969	$13.83	$12.67
0971	$13.26	$12.11
0993	$13.83	$12.67
1274	$14.56	$13.43

[18] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission.47 C.F.R. § 76.961(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

V Cable, Inc.	CUID Nos. OH0175, OH0662,
Cleveland Heights,	OH0765, OH0775, OH0862,
Ohio, System	OH0986, OH1944

Benchmark Filings To Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: March 14, 1995; Released: March 15, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the price V Cable, Inc. d/b/a Cablevision ("Cablevision") was charging for its cable programming service ("CPS") tier in the communities designated by the CUID numbers referenced above on its Cleveland Heights, Ohio, system. Cablevision has chosen to attempt to justify its price through benchmark showings on FCC Form 393. This Order addresses the reasonableness of Cablevision's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992, [2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.;[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first complete and timely CPS complaints in the franchise areas addressed in this Order were completed and served on Cablevision and received by the Commission on the dates set forth in Appendix A.

5. Cablevision filed its FCC Forms 393 for the franchise areas addressed in this Order on the dates set forth in Appendix B. Cablevision amended its justification on June 24, 1994, for CUID Nos. OH0775 and OH1944, and on July 1, 1994, for CUID Nos. OH0175, OH0775 and OH0986, in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally.[11]

III. BACKGROUND

6. Cablevision restructured its rates in an effort to comply with the Commission's Rules on September 1, 1993. In October 1993, Cablevision changed its channel line-up by deleting Channel 37 from HSN II, a non-satellite channel on the CPS tier, and adding WQHS, a non-satellite channel on the basic tier. On January 1, 1994, Cablevision again changed its channel line-up by moving Channel 17, a satellite channel on the CPS tier, to the basic tier. These changes in Cablevision's channel line-up were unaccompanied by any change in Cablevision's prices for its basic and CPS tiers. Cablevision completed Part II of Form 393 using its channel line-up as of October 1993. In Part I of Form 393, Cablevision performed alternative calculations using its number of channels as of September 1, 1993, and as of October 1993.

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Cablevision has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"),* the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Cablevision implemented its CPS price under the new regulations. *See* para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, reductions in Cablevision's price for the period after May 14, 1994 may be required to reflect the fact that Cablevision's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

IV. DISCUSSION

7. Cablevision acknowledges that its CPS price is higher than the maximum permitted price if Form 393 is calculated using the number of channels Cablevision offered as of October 1993.[12] Thus, Cablevision has failed to demonstrate that its price for the CPS tier was not unreasonable. Furthermore, upon review of Cablevision's Form 393 filings, we have found that Cablevision has not correctly calculated its maximum permitted price as of the initial date of regulation, and it is therefore appropriate to make the following adjustments to Cablevision's calculations in Form 393:

a. In its Form 393 filings, Cablevision's calculations for its rate-regulated package as of the initial date of regulation (Form 393, Part II, Worksheet 1 and Form 393, Part I) do not count Channel 30 as a regulated satellite channel. Similarly, Cablevision's calculations for its rate-regulated tiers as of September 30, 1992 (Form 393, Part II, Worksheet 2) do not count Channel 29 as a regulated satellite channel. However, according to the channel line-ups included with Cablevision's responses to complaints, as of the initial date of regulation Channel 30 carried Bravo, which is a non-rate-regulated pay-per-channel service, for 76 hours per week and carried C-Span II, which is a rate-regulated satellite service offered on the CPS tier, for 92 hours per week. The same programming in the same proportion was carried on Channel 29 as of September 30, 1992.

b. Our policy on "split" channels is to categorize them according to their preponderance of use. This policy is based on the fact that the 1992 price survey underlying the benchmark system was analyzed based on whole, not fractional, channel counts. Under the benchmark system in effect prior to May 15, 1994, all channels must be characterized as either rate-regulated or not subject to rate regulation and as either satellite or non-satellite. A "channel" is defined as a "unit of cable service identified and selected by a channel number or similar designation." FCC Form 393, p. 10. The preponderance-of-use test is the only one consistent with this conceptual framework.[13]

c. Under our rules, pay channels may not be counted as regulated channels or as satellite channels.[14] However, under the preponderance-of-use test, the channel that was split between Bravo and C-Span II is not a pay channel because it was used for a rate-regulated service the majority of the programming week. Cablevision therefore should have counted Channel 30 as a satellite channel on the CPS tier on Form 393, Part II, Worksheet 1 and Part I, and it should have counted Channel 29 as a satellite channel on the basic tier on Form 393, Part II, Worksheet 2.[15]

d. Cablevision's calculations for its rate-regulated channels as of the initial date of regulation (Form 393, Part II, Worksheet 1 and Form 393, Part I) count Channel 17 as a regulated satellite channel on the CPS tier. However, according to the channel line-ups submitted by Cablevision, Channel 17 was moved from the CPS tier to the basic tier before the filing of the first valid complaint in these franchise areas. The channels used in completing Form 393 should be those channels offered on the initial date of regulation for each franchise area.[16] Since the change in the use of Channel 17 occurred before any complaints were filed pertaining to these franchise areas, that change must be reflected in the channel counts.

e. In order to correct for the net effect of the channel-counting errors discussed above, we increase the number of satellite channels used in calculating the benchmark on Form 393, Part II, Worksheet 2, Line 220 from 22 to 23 and increase the number of total regulated channels in the same calculation from 32 to 33. We also increase the number of channels on Form 393, Part II, Worksheet 2, Line 202 from 32 to 33. On Form 393, Part II, Worksheet 1, we increase the number of total regulated channels and satellite channels used to calculate the benchmark on Line 121 from 31 to 32 and 21 to 22, respectively. We also increase the number of channels in the basic tier on Line 102 from 10 to 11. These adjustments have the net effect of reducing the benchmark channel rates entered on Line 121 of Worksheet 1 and Line 220 of Worksheet 2 and decreasing the base rates per channel on Part II, Worksheet 1, Line 110 and Part II, Worksheet 2, Line 210.

8. Because Cablevision has failed to demonstrate that its price for the CPS tier was not unreasonable, we will set prices for this tier, incorporating the adjustments discussed above. In doing so, we must also recalculate the Inflation Adjustment Factor on the basis of the most accurate data currently available for the dates that Cablevision was required to file Form 393 in each franchise area.[17] Our rules require a cable operator to respond to a complaint that is not returned by the Commission within 30 days after the complaint is served. 47 C.F.R § 76.956(c). In CUID No.

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[12] Cablevision asserts that when it initially restructured its monthly CPS tier price on September 1, 1993, it had one additional CPS channel and one fewer basic tier channel. If Cablevision had computed Part I of Form 393 based on the number of channels offered on September 1, 1993, its price would have been lower than the maximum permitted per-channel charge as calculated in the filings. However, as recognized by Cablevision, Form 393 must be completed using the number of channels offered by the operator as of the initial date of regulation.

[13] See *Viacom Cable, Nashville, Tennessee*, CUID No. TN0148, DA 94-1151, at para. 6a-6c (Cab. Serv. Bur., released Nov. 9, 1994).

[14] *See General Instructions for Completing FCC Form 393*, Instruction No. 5 ("Cable programming service consists of all video programming distributed over a cable system that is not included in the basic service tier or offered on a per-channel or per-program basis"); *Instructions for Worksheet 1*, Line 121 ("For purposes of using the benchmark tables, a satellite-delivered signal' is any cable program service or superstation' delivered on a communications satellite that is not a premium service (pay channel or pay-per-view channel)").

[15] Cablevision offered only a single tier of programming on this system as of September 30, 1992. Channel 29 was part of this tier.

[16] *See* note 12, *supra*.

[17] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

OH0175, Cablevision did not comply with this rule. Cablevision cannot be permitted an additional inflation adjustment simply because it filed Form 393 late.[18] On July 29, 1994, the Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 126.5 for the fourth quarter of 1993. Using these GNP-PI figures, we calculate 1.037 as the Inflation Adjustment Factor through January 1994, the base date Cablevision should have used in justifying its rate for CUID No. OH0175, and 1.039 as the Inflation Adjustment Factor through February 1994, the base date Cablevision properly used in justifying its rate for the other franchise areas which are the subject of this Order.

9. These adjustments have the cumulative effect of yielding the maximum permitted monthly CPS tier price for each franchise area set forth in Appendix C.

V. CONCLUSIONS

10. Upon review of the record herein, we conclude that Cablevision's showing supports the maximum reasonable CPS tier price for each franchise area set forth in Appendix C (plus franchise fee) for the period from the filing of the earliest complaint in each franchise area (as set forth on Appendix A) to May 14, 1994.[19] We further determine that we will order appropriate refunds pursuant to Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957, in order to reimburse subscribers for the amount they paid in excess of a reasonable price.

11. We further conclude that Cablevision must reflect in its FCC Form 1200 rate filings for the period after May 14, 1994 the fact that Cablevision's price during the earlier period was unreasonable. We reserve the right to make further adjustments to Cablevision's price for the period after May 14, 1994, upon completion of our review of Cablevision's FCC Form 1200 ratefilings.

12. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints referred to in Appendix A against the cable programming service price charged by V Cable, Inc. d/b/a Cablevision in the City of Shaker Heights, Ohio, CUID No. OH0175; the City of University Heights, Ohio, CUID No. OH0662; the City of Richmond Heights, Ohio, CUID No. OH0765; the Village of Woodmere, Ohio, CUID No. OH0775; Mayfield Village, Ohio, CUID No. OH0862; the City of Highland Heights, Ohio, CUID No. OH0986; and the City of Gates Mills, Ohio, CUID No. OH1944, and all other complaints in these franchise areas related to the same price, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

13. IT IS FURTHER ORDERED that the benchmark filings submitted by V Cable, Inc. d/b/a Cablevision with respect to the City of Shaker Heights, Ohio, CUID No. OH0175; the City of University Heights, Ohio, CUID No. OH0662; the City of Richmond Heights, Ohio, CUID No. OH0765; the Village of Woodmere, Ohio, CUID No. OH0775; Mayfield Village, Ohio, CUID No. OH0862; the City of Highland Heights, Ohio, CUID No. OH0986; and the City of Gates Mills, Ohio, CUID NO. OH1944, for the period beginning with the filing of the first valid complaint in each franchise area (as set forth in Appendix A) and ending on May 14, 1994 justify the maximum price in each franchise area set forth in Appendix C (plus franchise fee) for V Cable, Inc. d/b/a Cablevision's cable programming service tier.

14. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that V Cable, Inc. d/b/a Cablevision shall refund to subscribers that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A)[20] to May 14, 1994 which exceeded the maximum price for each franchise area set forth in Appendix C (plus franchise fee) per month and was thus unreasonable, plus interest to the date of the refund.

15. IT IS FURTHER ORDERED that V Cable, Inc. d/b/a Cablevision shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

16. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that V Cable Inc. d/b/a Cablevision shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to the City of Shaker Heights, Ohio, CUID No. OH0175; the City of University Heights, Ohio, CUID No. OH0662; the City of Richmond Heights, Ohio, CUID No. OH0765; the Village of Woodmere, Ohio, CUID No. OH0775; Mayfield Village, Ohio, CUID No. OH0862; the City of Highland Heights, Ohio, CUID No. OH0986; and the City of Gates Mills, Ohio, CUID No. OH1944, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price in each franchise area set forth in Appendix C (plus franchise fee).

17. IT IS FURTHER ORDERED that V Cable, Inc. d/b/a Cablevision shall place into effect, within 30 days after its submission of the revised Form 1200 filings required above, prices that reflect the reductions in the CPS rates determined in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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[18] *See Times Mirror Cable Television of Orange County, San Clemente, California*, DA 94-1334 (Cab. Serv. Bur., released Nov. 29, 1994).

[19] This finding is based solely on the representations of Cablevision listed in paragraph 5, *supra*, and the modifications described in paragraphs 7 and 8, *supra*. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[20] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
0175	1/25/94	1/17/94
0662	2/25/94	2/25/94
0765	2/24/94	2/24/94
0775	2/24/94	2/24/94
0862	2/24/94	2/24/94
0986	2/22/94	2/7/94
1944	2/25/94	2/25/94

Appendix B

CUID No.	Date Form 393 Filed
0175	3/29/94
0662	3/29/94
0765	3/29/94
0775	3/29/94
0862	3/29/94
0986	3/11/94
1944	4/12/94

Appendix C

CUID No.	Actual Rates	Maximum Reasonable Rates
0175	$14.34	$13.38
0662	$14.34	$13.42
0765	$14.34	$13.42
0775	$14.34	$13.42
0862	$14.34	$13.42
0986	$14.34	$13.42
1944	$14.34	$13.42

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-204

In re Applications of

CENTER FOR STUDY AND APPLICATION OF BLACK ECONOMIC DEVELOPMENT — File No. BRED-900131UA

For Renewal of License of
Station KUCB-FM
Des Moines, Iowa

and

IOWA ACORN BROADCASTING CORPORATION — File No. BPED-900102MB

MINORITY COMMUNICATIONS, INC. — File No. BPED-900116MA

For a Construction Permit
for a New FM Station
Des Moines, Iowa

MEMORANDUM OPINION AND ORDER

Adopted: May 30, 1995; Released: June 7, 1995

By the Review Board: MARINO (Chairman) and GREENE.

1. On April 17, 1995, Center for Study and Application of Black Economic Development filed a petition for reconsideration, which was opposed on April 19 by Minority Communications, Inc., and May 1 by the Mass Media Bureau. Center replied on April 28, 1995. It is well established that "reconsideration will not be granted to debate matters upon which we have already deliberated and spoken." *Eugene Walton*, 7 FCC Rcd 6038 (1992), quoting *WWIZ, Inc.*, 37 FCC 685 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1967). A petition for reconsideration must show a manifest error or material omission requiring "substantial alteration of the original decision." *Rio Grande Broadcasting Co.*, 8 FCC Rcd 8726 (Rev. Bd. 1993); *see* 47 CFR § 1.106(d). The petition does not satisfy the Commission's requirements for reconsideration requests and will, therefore, be denied.

2. By *Decision*, 10 FCC Rcd 2836 (Rev. Bd. 1995), we denied Center's application for renewal of Station KUCB-FM, in Des Moines, Iowa, after reviewing the record "based primarily on Center's exceptions, its proposed findings of fact, its contemporaneous documents filed with the Commission during 1987-1990, and the testimony of [three of its principal witnesses]." 10 FCC Rcd at 2837 ¶ 7. Two separate and independent conclusions were reached by a unanimous Board:

> First, we hold that substantial record evidence supports the ALJ's finding that Center's "no" response to Question 6 of the renewal application denying Knox's felony convictions was a misrepresentation. Second, and even more serious, is our conclusion that the record fully supports the ALJ's findings about a "cover up" and the giving of candorless testimony by Center's witnesses at the hearing. Thus, Center has breached the fundamental requirement that complete candor is demanded of "Commission licensees as to matters under investigation."

Id. (citations omitted); *see also* Statement of Board Member Marjorie Reed Greene, "this Review Board's decision has... everything to do with the Commission's requirement of truthfulness and reliability from its licensees...." 10 FCC Rcd at 2851.

3. As argued by the Mass Media Bureau and Minority, Center's petition merely repeats arguments, often verbatim, previously advanced in its proposed findings and exceptions and addressed by the Board's *Decision* and additional *Statement*. For example, Center states: "The Board failed to appreciate and understand that pertaining to Dr. Charles Knox's felony convictions, board members of Center did not have knowledge of these convictions as one occurred in Texas and one in Illinois"; and second, Center states: "The Board failed to understand and appreciate that Larry Nevilles was a crucial witness in the testimony that was presented and Mr. Parrish [Center's counsel of record] was denied the opportunity to cross-examine him...." The first argument had been advanced previously in Center's proposed findings to the ALJ and in exceptions filed with the Board. Our *Decision* at ¶ 10 addressed the argument and specifically stated that we were not relying on the ALJ's finding that Center's board members "Long and Samad knew of the [Knox] convictions when the renewal application was filed...," and that "our Decision [did] not rest on that finding." The second argument was set forth in Center's exceptions, and addressed by us at ¶ 22 of the *Decision*, where we held that "contrary to a contention by Center, ... its chief counsel, Alfredo Parrish, had an opportunity to fully cross examine Larry Nevilles... *See* Tr. 656-717, 762-764." Its other arguments are equally repetitive of matter previously considered in our *Decision*, and therefore provide no substantial basis for reconsideration.

4. ACCORDINGLY, IT IS ORDERED, That the petition for reconsideration filed by Center for Study and Application of Black Economic Development on April 17, 1995, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-75

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Blossom, Texas, and DeQueen, Arkansas)	RM-8615

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: May 25, 1995; Released: June 6, 1995

Comment Date: July 28, 1995
Reply Comment Date: August 14, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Red River Wireless Communications ("petitioner"), requesting the allotment of Channel 224C2 to Blossom, Texas, as the community's first local aural transmission service. In order to accommodate the allotment of Channel 224C2 to Blossom, petitioner also requests the substitution of Channel 227A for Channel 224A at DeQueen, Arkansas, and the modification of Station KDQN(FM)'s license accordingly. Petitioner states that it will apply for Channel 224C2 at Blossom and also will reimburse the licensee of Station KDQN(FM) for the reasonable costs associated with the change in channel at DeQueen.

2. We believe the public interest would be served by proposing the allotment of Channel 224C2 to Blossom,[1] and the substitution of Channel 227A for Channel 224A at DeQueen, Arkansas, since the proposal could provide Blossom with its first local aural transmission service. Channel 224C2 can be allotted to Blossom in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.0 kilometers (6.8 miles) east in order to avoid a short-spacing conflict with a pending proposal to allot Channel 225A at Bells, Texas, in MM Docket No. 94-152 (RM-8565).[2] Channel 227A can be allotted to DeQueen in compliance with the Commission's minimum separation requirements and can be used at the site specified in Station KDQN(FM)'s license.[3] In consideration of this proposal, we will direct an *Order to Show Cause* to the licensee of Station KDQN(FM) why its license should not be modified to specify operation on Channel 227A in lieu of Channel 224A. Petitioner will be required to reimburse the licensee of Station KDQN(FM) for the reasonable costs of moving to Channel 227A if this proposal is ultimately adopted.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Blossom, Texas	–	224C2
DeQueen, Arkansas	224A	227A

4. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Jay W. Bunyard and W. Bunyard, licensees of Station KDQN(FM), DeQueen, Arkansas, SHALL SHOW CAUSE why their license SHOULD NOT BE MODIFIED to specify operation on Channel 227A as proposed herein instead of the present Channel 224A.

5. Pursuant to Section 1.87 of the Commission's Rules, Jay W. Bunyard and W. Bunyard may, not later than **July 28, 1995**, file a written statement showing with particularity why their license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Jay W. Bunyard and W. Bunyard to furnish additional information. If Jay W. Bunyard and W. Bunyard raise a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Jay W. Bunyard and W. Bunyard will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

6. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to Jay W. Bunyard and W. Bunyard, P.O. Box 311, DeQueen, Arkansas, 71832.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **July 28, 1995**, and reply comments on or before **August 14, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C.

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[1] According to the 1990 U.S. Census, Blossom is an incorporated community with a population of 1,440 persons.

[2] The coordinates for Channel 224C2 at Blossom, Texas, are North Latitude 33-40-07 and West Longitude 95-16-13.

[3] The coordinates for Channel 227A at DeQueen, Arkansas, are North Latitude 34-01-57 and West Longitude 94-19-43.

20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

William J. Pennington, III
5519 Rockingham Road-East
Greensboro, North Carolina 27407
(Counsel for petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Alaska Telecom Ltd., L.C. File No. SCL-94-004
Application for a License to Land and
Operate a Submarine Fiber Optic Cable
between the Pacific Northwest
United States and the State of Alaska
U.S.A.

CABLE LANDING LICENSE

Adopted: May 31, 1995; Released: June 6, 1995

By the Chief, International Bureau

INTRODUCTION

1. The Bureau has under consideration the application of Alaska Telecom Ltd., L.C. ("Alaska Telecom"), received June 17, 1994, requesting a license to land and operate in the United States a fiber optic submarine cable system (the "Northstar" cable), with landing points in the Pacific Northwest United States, Juneau, Alaska, and another point in South Central Alaska. The Applicant proposes a privately owned system in which capacity in the cable would be sold or leased to users on a non-common carrier basis. We find that the Applicant has provided sufficient information to comply with the Cable Landing License Act[1] and therefore approve grant of this cable landing license.

APPLICATION

2. Alaska Telecom is a U.S. limited liabllity company organized under the laws of Virginia. The entire Northstar cable system, including plant and equipment, will be owned by Alaska Telecom. All of Alaska Telecom's owners and officers are U.S. citizens. The proposed Northstar cable would contain at least two fiber pairs operating at a minimum of 2.5 Gbps per fiber pair. The landing points in the Pacific Northwest and in Alaska have yet to be selected. The cable is scheduled for completion in December 1995.[2]

3. Alaska Telecom states that, because its application is for non-common carrier offerings and because there is no public interest reason for the Commission to require the Northstar facilities to be offered on a common carrier basis, the application need not be evaluated pursuant to Title II of the Communications Act of 1934.[3] Alaska Telecom urges the Commission to only consider the application pursuant to the Cable Landing License Act.[4]

COMMENTS

4. The application was placed on public notice on June 22, 1994. Alascom filed comments which do not oppose the application, but which allege that Alaska Telecom has not submitted sufficient information to enable a submarine cable landing license to be granted. Alaska Telecom replies that the Commission has all the information required under its rules. It states that the information that Alascom asserts is lacking is either not required or has been provided with sufficient specificity. Alascom also proposes that the Commission review the application under its "special policies" relevant to Alaskan telecommunications. Alaska Telecom replies that these policies are not relevant to its application.

5. Pursuant to Section 1.767(b) of the Commission's Rules,[5] the Cable Landing License Act and Executive Order No. 10530, dated May 10, 1954, we informed the Department of State of Alaska Telecom's application.[6] The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated it has no opposition to the grant of the cable landing license.[7]

DISCUSSION

6. Alaska Telecom requests a license to land and operate a non-common carrier submarine cable system under the Commission's private submarine cable policy. In 1985, the Commission adopted this policy to promote competition in the provision of international transmission facilities.[8] In accord with this policy, the Commission has found non-common carrier cable authorizations to be proper where there is no legal compulsion to serve the public indifferently and where there are are no reasons, implicit in the nature of the operations, to expect an indifferent holding out to the eligible user public.[9] Because of the wide availability of common carrier circuits between the contiguous United States and Alaska, we do not find that there is a public interest reason to require that Alaska Telecom's proposed cable facilities be provided on a common carrier basis.[10] Alaska Telecom will make "individualized decisions, in particular cases, whether and on what terms to deal," and does not undertake to "carry for all people

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[1] "An Act Relating to the Landing and Operation of Submarine Cables in the United States," 47 U.S.C. §§ 34-39 (1995) ("Cable Landing License Act").

[2] Alaska Telecom Application, at 3-4.

[3] 47 U.S.C. §§ 201-229 (1995).

[4] 47 U.S.C. §§ 34-39.

[5] 47 C.F.R. § 1.767(b).

[6] Letter from George S. Li, Chief, International Facilities Division, Common Carrier Bureau, FCC, to Steven W. Lett, Director, Office of Satellite and Cable Policy, Bureau of International Communications and Information Policy, U.S. Department of State, September 6, 1994.

[7] Letter from Michael T. N. Fitch, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State, to Scott Blake Harris, Chief, International Bureau, FCC, April 24, 1995.

[8] *Tel-Optik, Ltd.*, 100 FCC 2d 1033, 1041 (1985) (*Private Cable Decision*).

[9] *Optel Communications, Inc.*, 8 FCC Rcd 2267 (1993); *see National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir.), cert. denied, 425 U.S. 922 (1976) (*NARUC I*).

[10] *See* Alaska Telecom Application, at 8-10.

indifferently."[11] We therefore do not find that there is any reason to expect that the proposed Northstar cable circuits would be held out to the public indifferently.[12] We therefore conclude under applicable precedent that Alaska Telecom's proposal to sell or lease bulk capacity in the Northstar cable is not likely to be made available to the public as a common carrier activity and therefore need not be regulated under Title II of the Communications Act.[13]

7. Alascom asserts in its comments that Alaska Telecom's application fails to comply with Section 1.767(a) of the Commission's Rules[14] because it does not supply a description of the landing points of the cable on the shore of the United States or provide a map.[15] Alaska Telecom's application states that the exact cable landing sites have yet to be selected. It states that landing sites will be chosen to ensure secure submarine and land routes, to facilitate interconnection, and that the landing points will be in conformity with plans approved by the Secretary of the Army. In its reply comments, Alaska Telecom points out that the Commission has found generalized descriptions such as theirs sufficient, and that their application does indeed provide a map.[16]

8. We will treat Alaska Telecom's reply comments as a request for a waiver of that portion of Section 1.767(a) which requires an application contain the location of points on shore of the United States where the cable will land. Consistent with prior decisions, we find that Alaska Telecom's description that the cable will land in the Pacific Northwest United States, Juneau, Alaska, and another point in South Central Alaska to be sufficient to determine whether the proposed cable would comply with the provisions of the Cable Landing License Act and Commission Rules.[17] We therefore waive the requirements of Section 1.767(a) to the extent that it requires the specific location of landing points to be provided in this application. We note that Alaska Telecom has provided a general map with its application and find it sufficient to comply with Section 1.767(a). To ensure compliance with the Sections 1.1305-1.1307 of the Commission's rules regarding the protection of the environment,[18] we require as a condition of this license that Alaska Telecom inform us of the precise landing points of the Northstar cable no less than 120 days prior to commencing construction of cable landing stations at those locations.[19] In accord with previous Commission decisions, and contrary to Alascom's assertions, we do not find that an environmental assessment is necessary at this time. We do, however, reserve the right to require Alaska Telecom to file such a statement should we determine that the landing of the cable would have significant impact on the environment.[20]

9. Alascom also argues that Alaska Telecom's application is insufficient because its description of the proposed use, need and desirability of the cable is "thin." Alaska Telecom responds that the proposed cable will provide needed additional video, voice and data transmission capacity and interconnect interexchange and international networks between the contiguous United States and Alaska. It states that Alascom controls the only existing fiber optic link between Alaska and the contiguous United States and states that a realistic alternative to Alascom's service is in the public interest. Alaska Telecom asserts that the Northstar cable will provide significant public interest benefits in the form of encouraging market-based competitive entry and increased efficiency, additional capacity, redundancy capacity, and restoration potential. Alaska Telecom further states that the proposed cable will provide much needed terrestrial-based service to Juneau, provide a needed fiber optic diversity path between Alaska and the contiguous United States, and provide additional redundant and secure capacity for military users.[21] We find that this description of the proposed use, need and desirability of the Northstar cable is sufficient to meet the requirements of Section 1.767(a).

10. Alascom also states that the Commission's "special policies" relevant to Alaskan telecommunications required that Alascom's acquisition of the Alaska Spur be treated as if it were an international facility subject to the Commission's international policies. Alascom asserts that the Commission should review Alaska Telecom's proposed Northstar cable under these same policies. It therefore asks that the Commission review whether Alaska Telecom has any arrangements with international entities for ownership, control or financing, whether domestic firms will be provided a reasonable opportunity to participate in the planning, manufacture, installation, operation or maintenance of the proposed cable, and whether capacity will be made available on a reasonable and non-discriminatory basis.[22] Alaska Telecom notes that regulatory treatment of the proposed cable would differ significantly from that of the Alaska Spur because the Alaska Spur is a portion of an international cable, whereas the Northstar cable would be a domestic facility connecting three U.S. points.[23]

11. Alascom misconstrues our regulatory treatment of the Alaska Spur and proposes to apply regulatory principles to this proceeding that have no bearing whatever on Alaska Telecom's application for a non-common carrier

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[11] Alaska Telecom Application, at 11 (quoting *NARUC I*, 525 FCC 2d at 641).

[12] *See NARUC I*, 525 F.2d 630; *see also, Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686 (1987) (conditional license); 4 FCC Rcd 8061 (1989) (final license); *Transnational Telecom Ltd.*, 5 FCC Rcd 598 (1990) *Transgulf Communications Ltd., Inc.*, 6 FCC Rcd 2335 (1991).

[13] *NARUC I*, 525 F.2d 630; *Private Cable Decision*, 100 FCC 2d 1033, 1046.

[14] 47 C.F.R. § 1.767.

[15] Alascom Comments, at 1.

[16] Alaska Telecom Reply Comments, at 2-4 (citing *Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686, 2688; *Transnational Telecom Ltd.*, 5 FCC Rcd 598, 600).

[17] 47 U.S.C. §§ 34-39. *See Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686, 2688; *Transnational Telecom Ltd.*, 5 FCC Rcd 598, 600.

[18] 47 C.F.R. §§ 1.1305-1.1307.

[19] The Commission placed the same condition on the applicants before granting final cable landing licenses to Tel-Optik, Ltd., Submarine Lightwave Cable Company *Private Cable Decision*, 100 FCC 2d at 1045, 1046, *Pacific Telecom Cable, Inc.*, 2 FCC Rcd at 2688, 2689, and *Transnational Telecom, Inc.*, 5 FCC Rcd at 600.

[20] *See* 47 C.F.R. 1.1305, 1.1307; *See also, Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686; *Transnational Telecom Ltd.*, 5 FCC Rcd 598.

[21] Alaska Telecom Application, at 7-11.

[22] Alascom Comments, at 3.

[23] Alaska Telecom Reply Comments, at 7. The "Alaska Spur" is a portion of an international cable linking Pacific City, Oregon, Anchorage Alaska, and Miura, Japan. *See Pacific Telecom Cable, Inc.*, 2 FCC Rcd 2686.

submarine cable landing license. Alascom's acquisition of the Alaska spur was considered by the Commission under Section 214 of the Act[24] as an acquisition of the domestic portion of an international facility by a dominant interexchange common carrier.[25] In contrast, Alaska Telecom, a nondominant carrier, applies for a license to land a non-common carrier cable that is wholly domestic in nature. We find no reason to require the same information regarding costs, circuit capacities, accounting and financing as was required of Alascom in its acquisition of the Alaska Spur.[26] Finally, we reject Alascom's request that capacity in this cable be required to be provided "on a reasonable and nondiscriminatory basis."[27] Such a requirement would be inconsistent with our policy regarding non-common carrier cables.[28]

12. Accordingly, in view of the above, we conclude that U.S. interests under the Cable Landing License Act will be served by grant of a license to Alaska Telecom as conditioned below.

ORDERING CLAUSES

13. Consistent with the foregoing, the Commission hereby GRANTS AND ISSUES, under the provisions of an Act entitled "An Act Relating to the Landing and Operation of Submarine Cables in the United States," 47 U.S.C. Sections 34-39, and Executive Order 10530, dated May 10, 1954 (delegating to the Federal Communications Commission certain presidential functions relating to submarine cable landing licenses), to Alaska Telecom. Ltd., L.C., a license to land and operate a high-capacity fiber optic digital submarine cable with at least two working fiber pairs, each pair operating at a minimum of 2.5 Gbps, associated regenerators and supervisory circuits, the southern end of the cable landing in the Pacific Northwest United States and the northern ends landing in Juneau and another point in South Central Alaska. This grant is subject the following conditions.

(1) The location of the cable within the territorial waters of the United States of America, its territories and possessions, and upon its shore, shall be in conformity with plans approved by the Secretary of the Army, and the cable shall be moved or shifted by the Licensee at its expense upon the request of the Secretary of the Army whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance or improvement of harbors for navigational purposes;

(2) The Licensee shall at all times comply with any requirements of United States Government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus with a view of protecting and safeguarding the cable from injury or destruction by enemies of the United States of America;

(3) Neither this license nor the rights granted herein, shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer of control of the Licensee to any persons, unless the Federal Communications Commission shall give prior consent in writing;

(4) The Licensee shall notify the Commission in writing of the precise locations on the coast of the Pacific Northwest United States and Juneau and South Central Alaska at which the cable will land no less than 120 days prior to commencing construction of cable landing stations at those locations; the Commission reserves the right to require the Licensee to file an environmental impact statement should it determine that the landing of the cable at those locations and construction of necessary cable landing stations would have a significant impact upon the environment within the meaning of Sections 1.1305-1.1307 of the Commission's Rules and Regulations implementing the National Environmental Policy Act of 1969, 42 U.S.C. Sections 4321-4335; this license is subject to modification by the Commission upon its review of any environmental impact statement that it may require pursuant to its Rules;

(5) This license is revocable after due notice and opportunity for hearing by the Federal Communications Commission in the event of breach or nonfulfillment of any requirements specified in Section 2 of "An Act Relating to the Landing and Operation of Submarine Cables in the United States," 47 U.S.C. Sections 34-39, or for failure to comply with the terms of the authorization;

(6) The Licensee shall notify the Commission in writing of the date on which the cable is placed in service, and this license shall expire 25 years from such date, unless renewed or extended upon proper application, and upon expiration of the license, all rights granted under it shall be terminated; and

(7) The terms and conditions upon which this license is given shall be accepted by the Licensee by filing a letter with the Secretary, Federal Communications Commission, Washington, D.C. 20554, within 30 days of the release of this cable landing license.

14. This order is issued under Section 0.261 of the Commission's Rules, 47 C.F.R. 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106, or applications for review under Section 1.115 of the Commission's Rules, 47 C.F.R. 1.106, 1.115, may be filed within 30 days of the date of public notice of this order (See 47 C.F.R 1.4(b)(2)).

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[24] 47 U.S.C. § 214.

[25] *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, CC Docket No. 83-1376, (October 26, 1993). *See Alascom, Inc.*, 7 FCC Rcd 2969 (Comm. Car. Bur., 1991).

[26] We do note that Alaska Telecom responds to some of Alascom's concerns by stating that it has no arrangements with any international entities regarding the ownership, control, financing, or operation of the Northstar cable. Reply Comments of Alaska Telecom, at 7.

[27] Alascom Comments, at 3.

[28] *See Private Cable Decision*, 100 FCC 2d, at 1052.

FEDERAL COMMUNICATIONS COMMISSION

Scott Blake Harris,
Chief, International Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 7, 1995

THE FLORIDA PUBLIC SERVICE COMMISSION REQUESTS AN INTERPRETATION OF THE APPLICABILITY OF THE LIMIT ON CHANGE IN INTERSTATE ALLOCATION, SECTION 36.154(f) OF THE COMMISSION'S RULES AAD 95-77

Comment Date: July 7, 1995
Reply Date: July 21, 1995

In a letter dated May 12, 1995, the Florida Public Service Commission ("FPSC") filed a request for an interpretation of the applicability of 47 C.F.R. §36.154(f), "Limit on Change in Interstate Allocation," after 1993, and after a study area's Subscriber Plant Factor ("SPF") has reached a level of 25 percent.

FPSC's interpretation request states that 47 C.F.R. §36.154(f) requires that no study area's percentage allocation for Exchange Line C&WF and Exchange Line Circuit Equipment (including associated maintenance and depreciation expenses) shall decrease by a total of more than 5 percentage points from one year to the next as a result of the combined operation of 47 C.F.R. §§36.154(d) and 36.641(a) and (b). Additionally, the FPSC request states that 47 C.F.R. §36.154(d) describes the SPF transition from its level in 1988 to 25 percent in 1993, and that 47 C.F.R. §§36.641(a) and (b) cover the transition mechanism for the Universal Service Fund ("USF") expense adjustment from its 1988 level to a full amount in 1993. FPSC states that the application of these two transition rules can result in a SPF greater than 25 percent in 1993, and subsequent years. Finally, the FPSC states that in its view, the Commission's rules are clear that the 5 percent limit applies through 1993, but that the rules are not clear if the limit applies after 1993, and after a study area's SPF factor has reached 25 percent.

Interested parties may file comments on this petition on or before **July 7, 1995**, and reply comments on or before **July 21, 1995**, with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Comments and reply comments should reference AAD 95-77. Four (4) copies of each comment and reply comment should also be sent to Bob Hall, Cost Analysis Branch, Accounting and Audits Division, Common Carrier Bureau, Room 812, 2000 L Street, N.W., Washington, D.C. 20554, and one (1) copy should be sent to the Commission's contractor for public service record duplication: International Transcription Service (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the petition may be obtained from the Accounting and Audits Division's public reference room, Room 812, 2000 L Street, N.W., Washington, D.C. Copies are also available from ITS at (202) 857-3800.

We will treat this proceeding as non-restricted for the purposes of the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§1.1200-1.1206. For further information contact Bob Hall at (202) 418-0857.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Petition and Application of US West Communications — File No. W-P-C-6998

For a Declaratory Ruling or, Alternatively,
For Blanket Section 214 Authorization
of Transfers to Unaffiliated Carriers
of Less than 1,000 Access Lines
Where all Existing Services Will
Be Provided Without Interruption
And Where the State Commission
Has Approved the Transaction

ORDER AND AUTHORIZATION

Adopted: June 1, 1995; Released: June 7, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. US West Communications (US West or Petitioner) has filed with the Commission the above-captioned Petition. US West asks the Commission to declare that Section 214 discontinuance certification is not required when (1) responsibility for serving a local exchange (or portion thereof) is transferred from one telephone company to another, and (2) no service will be discontinued, impaired or interrupted as a result of the transfer.[1] In the alternative, US West requests we issue it a blanket Section 214 discontinuance certificate allowing transfers to unaffiliated carriers of local exchanges involving less than 1,000 access lines where all existing services will continue to be provided without interruption and where the transfer is approved by the state commission with jurisdiction over the local exchange.

2. Comments in response to the Petition were filed by the Idaho Public Utilities Commission (Idaho), and a Petition to Deny was filed by the Ronan Telephone Company (Ronan). The United States Telephone Association (USTA), US West and Ronan filed reply comments.[2] In this Order, we grant US West a blanket Section 214 discontinuance authorization to discontinue services on lines transferred to carriers with which it has no affiliation if: (1) no more than 1000 lines are included in the transfer; (2) there is no termination or interruption of existing services; (3) the state commission exercising jurisdiction over telecommunications carriers does not object to the transfer; and (4) waiver of the definition of study area under Part 36 has been granted for all areas involved in the transfer under the Part 36 study area waiver standards stated in *US West Communications, Inc. and Eagle Communications Joint Petition for Waiver,* AAD 94-27, FCC 95-4 (released Jan. 5, 1995).

II. CONTENTIONS AND DISCUSSION

A. Declaratory Ruling -- Comments

3. In its Petition, US West asks the Commission to declare that a certificate of public convenience and necessity under Section 214 of the Communications Act of 1934, as amended (the "Act"),[3] is not required when access lines are simply being transferred from one company to an unaffiliated company if no existing services will be discontinued or interrupted as a result of the transfer. US West claims this type transfer is not a discontinuance but a change in operations. Section 214 "specifies that no certificate is required for 'changes in ... operation ... which will not impair the adequacy or quality of service provided.'"[4]

4. According to US West, Section 63.60(a) of the Commission's rules confirms this interpretation by defining discontinuance in terms of four examples: closure of a telephone exchange; reduction of hours of service by a carrier; dismantling or removal of trunk lines by a carrier; and severance by a carrier of its physical connection with another carrier. These examples do not include transfer of a local telephone exchange from one carrier to another.[5] Finally, US West cites instances in which the Commission has permitted transfer of lines without Section 214 certification.[6]

5. In its Petition to Deny, Ronan claims that Section 214 authority is required whenever lines are transferred from one telephone company to another. Ronan says that, during the divestiture of AT&T, the Commission considered the claim that transfers to the Bell operating companies would not constitute discontinuance under Section 214, because service would not be interrupted.[7] The Commission held that authorization for discontinuance was re-

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[1] 47 U.S.C. Section 214 provides in part that "No carrier shall discontinue, reduce or impair service to a community ... unless ... there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected...."

[2] US West filed a Motion to Strike Ronan's allegedly late reply comments or, in the alternative, to grant the filing of US West's attached Supplemental Memorandum replying to Ronan. Ronan subsequently filed an Opposition to the Motion to Strike, asking the Commission either to strike the Supplemental Memorandum or to accept Ronan's attached Response to Supplemental Memorandum. Because of the confusion resulting from multiple response dates, and the Commission's wish to have as complete a record as possible in this proceeding, we will accept all these late-filed pleadings. US West also argues that Ronan lacks standing to challenge US West's application because Ronan would not be harmed by grant of the application. Section 63.52 of the Commission's rules, however, states that "any interested party may file a petition to deny an application." 47 C.F.R. § 63.52. Ronan is an interested party because it may be competitively affected if transfers to its competitors are allowed in the absence of individual Section 214 review. If such transfers are allowed, Ronan will lose an opportunity it would otherwise have to object to individual transfers under Section 214. Therefore, Ronan has standing.

[3] 47 U.S.C. Section 214.

[4] Petition at 4, quoting 47 U.S.C. §§ 214(a).

[5] Petition at 4-5, *citing* 47 C.F.R. § 63.60.

[6] *See, e.g., Public Notice* DA-93-254 (March 10, 1993)(granting a study area waiver for the transfer of six exchanges without mention of Section 214 authorization).

[7] Ronan Petition to Deny at 4.

quired because all parties to the transaction would cease to provide certain services; AT&T would no longer offer local exchange service and the Bell operating companies would no longer serve as interexchange carriers. The fact that these services would continue under different providers was not a factor.[8] Ronan cites examples in which Section 214 authorization was held necessary for much smaller transfers than those required by AT&T's divestiture.[9] Ronan further argues that US West has misconstrued Section 63.60 of the Commission's rules, which states specifically that "discontinuance ... is not limited to" the list of four examples cited by US West.[10] Finally, Ronan requests a public hearing pursuant to Section 221(a) of the Communications Act, which applies top applications "by any telephone company ... to acquire ... any part of another telephone company," and states that "a public hearing shall be held in all cases where a request thereof is made by a telephone company...."[11]

6. In its Comments, Idaho supports the declaratory ruling requested by US West on the condition that there be prior approval for such transfers from the appropriate state regulatory authority. It says that the Petition might more appropriately be considered under Section 221 of the Act.[12]

7. In its Reply Comments, USTA supports the declaratory ruling proposed by US West. It states that the condition suggested by Idaho is unnecessary because the Communications Act does not preempt state authority if a state has a statutory provision requiring state commission approval of sales of telephone exchanges or other properties within its jurisdiction.[13] USTA also argues that the requested declaratory ruling is independently justified by the specific exemptions in Section 214(a) for: (1) lines within a single state not constituting part of interstate lines; (2) local, branch or terminal lines less than ten miles in length; (3) lines acquired under Sections 221 and 222 of the Act; and (4) installation, replacement or other changes in plant, operation or equipment, other than new construction, which will not impair the adequacy or quality of service provided.[14]

8. In its Reply Comments, US West argues that no purpose is served by Section 214 review because these transfers will be reviewed under the same public interest standard when the transferring carriers apply for the necessary Part 36 study area waivers.[15] US West lists eight examples of prior Commission decisions to grant Part 36 study area waivers for transfers of exchanges.[16] In each case US West claims no Section 214 authorization was applied for or obtained. US West further claims that the language from the *AT&T Transfer Order* cited by Ronan is *dictum* and that Section 221(a) of the Act is inapplicable to its request. US West asserts that Section 221(a) is to be invoked when a proposed merger or acquisition may violate federal law because this Section empowers the Commission to immunize mergers and acquisition from "any Act or Acts of Congress making the proposed transaction unlawful."[17] US West declares that its Petition does not involve any such merger or acquisition and that there is no need to request immunity under Section 221. US West asks the Commission to deny Ronan's request for a hearing, noting that even if Section 221 were applicable, the Commission has previously held that the public hearing requirement of Section 221(a) is satisfied by the Commission's comment and reply procedures.[18]

9. In its Reply Comments, Ronan responds to US West's claim that some carriers have failed to apply for Section 214 authorizations in similar circumstances after being granted Part 36 study area waivers. Ronan cites the Commission's conclusion that a carrier's "failure to consistently file, and our failure to consistently require formal applications under Section 214 does not restrict the scope of our 214 jurisdiction."[19] Finally, Ronan asserts that the primary purpose of review of Part 36 study area waiver requests is to determine the impact on the Universal Service Fund (USF or the "Fund")[20] support program so as to prevent carriers from subdividing study area boundaries to isolate areas with high costs in order to increase the high cost support provided under the Fund.[21] In contrast, the purpose of review under Section 214 is to regulate entry into

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[8] *In re the Consolidated Application of American Telephone and Telegraph Company and Specified Bell System Companies for Authorization Under Section 214 and 310(d) of the Communications Act*, 96 FCC 2d 18, 44 (1983) (*AT&T Transfer Order*), *mod. on recon.* 98 FCC 2d 141(1984).

[9] Ronan Petition to Deny at 5, *citing, inter alia, Western Union, Commercial Telegraphers Union v. U.S.*, 87 F. Supp. 324, 335-36 (D.D.C.), *aff'd.* 70 S. Ct. 148 (1949).

[10] Ronan at 6, *quoting* 47 C.F.R. §63.60.

[11] 47 U.S.C. § 221.

[12] Idaho Comments at 1 and 4.

[13] USTA Reply Comments at 2, *citing Kitchen v. FCC*, 464 F.2d 801 (D.C. Cir. 1972) and 47 U.S.C. § 221(b).

[14] 47 U.S.C. § 214(a).

[15] A study area is a geographical segment of a carrier's telephone operation. Generally, a study area represents a carrier's entire area of operation within a state. Carriers perform their jurisdictional separations at the study area level. The Appendix-Glossary of Part 36 of the Commission's rules, 47 C.F.R. Part 36 Appendix-Glossary, freezes the study area boundaries as of November 15, 1984. Carriers wishing to change their study area boundaries must request a waiver of the rule.

[16] *See Memorandum Opinion and Order*, 5 FCC Rd 2453 (1990); *Memorandum Opinion and Order*, 5 FCC Rd 4570 (1990); *Memorandum Opinion and Order*, 5 FCC Rd 7100 (1990); *Memorandum Opinion and Order*, 6 FCC Rd 5123 (1991); *Memorandum Opinion and Order*, 7 FCC Rd 2081 (1992); *Memorandum Opinion and Order*, 7 FCC Rd 3321 (1992); *Memorandum Opinion and Order*, 7 FCC Rd 6081 (1992); *Memorandum Opinion and Order*, 7 FCC Rd 6382 (1992).

[17] Reply Comments of US West at 4 *quoting* 47 U.S.C. § 221(a) and *Pacific Northwest Bell*, ENF-85-52 para. 6 (May 2, 1986)(Section 221 is primarily designed to permit the Commission to confer immunity from the antitrust laws in the context of telephone company acquisitions and mergers where the Commission finds that such acquisitions or mergers would be advantageous to the persons to be served and otherwise in the public interest).

[18] Reply Comments of US West at 13, *citing Memorandum Opinion and Order*, ENF-85-52, at paragraphs 5-9 (May 2, 1986).

[19] *In re Application of General Telephone and Electronics Corporation to Acquire Control of Telnet Corporation*, 72 FCC 2d 91, 99 (June 4, 1979) (*General Telephone*).

[20] The USF is administered by the National Exchange Carrier Association (NECA) and is intended to assist local telephone companies with higher than average costs so as to ensure universal service. *See* Universal Service: A Report on the Universal Telephone Service Programs administered by the National Exchange Carrier Association, Inc., 10-91-6500 (1991).

[21] Reply Comments of Ronan at 18, *citing In re Amendment of Part 36*, 5 FCC Rcd 5974 (1990).

and from the common carrier communications field.[22] Therefore, Ronan asserts, review under Part 36 does not satisfy the need for Section 214 review.

B. Declaratory Ruling -- Discussion

10. We agree with US West that the purpose of review under Section 221 is to determine whether telecommunications acquisitions that may otherwise violate antitrust laws are of sufficient public benefit to merit immunity. Section 221 was "intended under proper circumstances to relieve consolidated telephone interests from the ...[applicable antitrust laws]. It authorizes ... after a hearing, of which the proper state authorities have notice, ... a finding by the Commission that the proposed consolidation will be ... in the public interest ... and thereupon the ...[antitrust provisions] will not apply to such consolidated companies."[23] None of the parties even allege an antitrust violation. Section 221's provisions allowing hearings are not applicable to Section 214 applications.

11. We also agree with US West's contention that review for the purpose of obtaining study area waivers may, in some circumstances, be adequate to serve the purposes of review under Section 214. The standard for reviewing petitions for waiver of study area boundaries are well established and very specific: "first, that the change not adversely affect the universal service fund (USF) support program; second, that the state commission(s) having regulatory authority have no objection to the change; and finally, that there is strong public interest support for a waiver."[24] Only the first of these conditions is limited to USF concerns. All three taken together may satisfy the public interest finding required by the Commission for Section 214 authorizations in many cases.

12. Uninterrupted continuation of services, however, does not prevent a transfer of lines from being considered a discontinuance requiring Section 214 authorization. Clearly US West proposes to discontinue service, although that service will be continued by another carrier. The decision authorizing transfer in the *AT&T Transfer Order* was made "pursuant to Section 214 ... of the Communications Act," and specifically held that Section 214 discontinuance authority was necessary in cases like this.[25] This conclusion is not refuted by examples of cases in which Part 36 waivers were granted to parties who may subsequently have failed to file Section 214 applications.[26] Moreover, the requested declaratory ruling cannot be justified by the fact that the findings necessary for waiver of the Part 36 study area definition may be sufficient for a determination that discontinuance would serve the public necessity under Section 214.[27]

13. There is no evidence that the exceptions to Section 214 for local lines within a single state, local lines less than ten miles in length, and lines acquired under Sections 221 or 222 of the Act apply here. Even if we determined that these exceptions applied to discontinuances, we have been given no reason to conclude that everything that could fall within the scope of US West's proposed declaratory ruling would also fall within the scope of one or another of these three exceptions.[28]

14. On the other hand, by its plain language, the fourth exception to Section 214, the one for changes in plant that will not impair the adequacy or quality of service, is clearly applicable to discontinuance of service. Furthermore, when the Commission said in *General Telephone* that the exception for changes that do not impair service was intended to reach routine improvements, the Commissiondid not state that that was its exclusive purpose.[29] Nevertheless, a finding that discontinuances of the type covered by the proposed declaratory ruling fall under the fourth exception would require a preliminary determination that such discontinuances are unlikely ever to impair the adequacy or quality of service. The record does not offer a sufficient basis for such a determination. Because the circumstances surrounding discontinuances associated with sales and mergers of exchanges will vary, so will the applicability of this and the other Section 214 exceptions. Therefore, we deny US West's Petition for a declaratory ruling declaring that Section 214 authorization is not required when ownership of an exchange is transferred without any service interruption.

C. Blanket Section 214 Authorization -- Comments

15. In the alternative, US West seeks blanket Section 214 authorization for transfers when the following conditions are met: (1) the transfer will be to a carrier not affiliated with US West; (2) the transaction involves fewer than 1,000 access lines; (3) the new service provider will not discontinue or interrupt any existing service; and (4) the state commission with authority over the local exchange does not oppose the transfer.[30] US West asserts that review of such transactions by state public service commissions is often more thorough than review by the Federal Communications Commission, because the issues involved are local.[31] US West claims that 1,000 lines represent such a small proportion of total access lines in the United States that there is no risk that such transfers would affect the interstate telecommunications market or result in unreasonable rates for the interstate services available from these lines. US West asserts that a requirement that there be no objection from the state commission with jurisdiction over the lines in question will provide further protection against unreasonable rates.[32] US West also argues that issuance of such a blanket authorization will reduce the burden of

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[22] *General Telephone*, 72 FCC 2d at 99.

[23] *Id., quoting* H. Rep. 109, 67th Cong. 1st Sess at 3.

[24] *See, e.g., Memorandum Opinion and Order*, 9 F.C.C.R. 3197 (June 29, 1994), *citing Joint Board Recommendation*, 49 Federal Register at 48337 and *Notice of Proposed Rulemaking*, 5 FCC Rcd 5974 (1990).

[25] *AT&T Transfer Order*, 96 FCC 2d at 44, 91.

[26] See note 18 above.

[27] 47 U.S.C. § 214.

[28] The exceptions, on their face apply to "construction, acquisition or operation ...." Whether a group of lines is sufficiently "local" to fall under either of the first two exceptions is often a question of fact. *See, e.g., In the Matter of the Application of New Jersey Bell Telephone Company for Authority pursuant to Section 214*, 9 FCC Rcd 3677 (1994), paragraphs 45-64.

[29] *See also In the Matter of Chastain et al. v. AT&T from the U.S. District Court for the District of Columbia*, 49 FCC 2d 749 (1974), para. 13; *remanded* for evidentiary hearing on factual issues *American Telephone and Telegraph Co. v. FCC*, 551 F.2d 1287 (1977); *vacated* to avoid unnecessary hearings where issue in controversy had ceased to exist, 65 FCC 2d 25 (1977).

[30] Petition at 6.

[31] *Id.* at 8 n.9.

[32] *Id.* at 7.

filing fees and processing of numerous, separate Section 214 applications for very small transfers and will reduce the lengthy and costly delays associated with them. US West cites costs from $1.00 to over $300.00 per subscriber for the filing fee alone in certain cases.[33] As authority for the requested blanket authorization, US West cites Section 63.62(g) of the Commission's Rules which states:

> (g) An application may be filed requesting authority to make a type of reduction in service under specified standards and conditions in lieu of individual applications for each instance coming within the type of reduction in service proposed.[34]

16. In support of US West's request, USTA argues that blanket Section 214 authorizations have previously been granted by the Commission. Such an authorization is justified in the present case, USTA believes, because small transactions, some involving as few as 20-50 lines, are increasing in number and are highly unlikely to implicate federal interests. USTA further argues that the Commission's Section 214 processes can become a bottleneck to completing transactions that serve the public interest.[35] Idaho states that it has no objection to the blanket application if it is considered under Section 221 and conditioned upon the carrier's not consummating the transaction without the approval of the appropriate state commission.[36]

17. Ronan, in its Petition to Deny, claims Section 63.62(f) requires US West to submit an application that includes all information specified in Section 63.505 in order to receive a blanket authorization under Section 63.62(g).[37] Citing US West's transfer of 60 rural exchanges in Montana, Ronan also argues that blanket authorization will only facilitate a "massive selloff by US West of rural exchanges" in an attempt to evade its obligation to upgrade service in those exchanges, in violation of Commission policy.[38]

18. In its Reply, US West argues that Section 63.62(g) expressly allows application for blanket Section 214 authorizations "in lieu of individual applications." US West denies that it is avoiding improving rural markets, citing $270 million spent on improvements in rural areas in 1992 and 311 rural switches it installed in that year, twice the number of switches in AT&T's entire network.[39]

19. Ronan claims in its Reply that review of requests for waiver of Part 36 study areas would not serve the purpose of Section 214 review because Part 36 waiver requests could take place after discontinuance.[40] Ronan notes that US West paid $2.5 billion dollars for an interest in Time Warner Cable and states that US West is far more able to upgrade rural services than the small carriers to which it is selling its rural exchanges.[41] Ronan asks the Commission to condition blanket Section 214 authorization on carriers' obtaining *affirmative approval from,* not just an absence of objection after consultation with, state regulators with jurisdiction.[42]

20. In its supplemental pleadings, US West asserts that a different subsidiary of US West, Inc., purchased Time Warner and that that transaction in no way reflects the assets of US West (that is, US West Communications, the Petitioner).[43]

D. Blanket Section 214 Authorization -- Discussion

21. We grant US West the blanket authorization it seeks subject to additional conditions designed to ensure that transfers occur only after: (1) adequate FCC review of the effect of such transfers on the Universal Service Fund, those who contribute to it, and those who draw from it; and (2) adequate opportunity for comment by state commissions.

22. We have found review of the cumulative impact of transfers on the USF, a concern routinely addressed in Commission review of study area waiver requests,[44] to be essential to assuring this program's continued integrity. US West's proposal fails to address the need for such review. In another action before the Commission, US West has asked us to dispense with requiring certain study area waivers altogether.[45] If this request and blanket Section 214 authorization were both granted, there would be no federal review of the impact on the USF for any of the transactions at issue here.

23. US West would make absence of objection to proposed transfers by the state regulatory authority exercising jurisdiction a precondition for blanket authorization. No-

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[33] *Id.* at 8-9.
[34] 47 C.F.R. § 63.62(g).
[35] USTA at 2-5.
[36] Idaho at 4.
[37] Petition to Deny at 11.
[38] *Id.* at 6-7. On October 27, 1993, the Montana Public Service Commission held that sales of the Montana US West exchanges, including the allocation of gain on the sales to US West Communications shareholders, was in the public interest. On December 28, 1993, after the Accounting and Audits Division, Common Carrier Bureau, granted Part 36 study area waivers for all but one of these exchanges, the Domestic Facilities Division, Common Carrier Bureau, granted Section 214 authorization for discontinuances for all the exchanges granted study area waivers. The exchange not granted a study area waiver was also granted Section 214 discontinuance authorization, conditioned upon receipt of its pending study area waiver. Issues raised specifically with regard to the discontinuances in Montana, therefore, are moot.
[39] US West's Reply Comments at 16.
[40] Ronan's Reply Comments at 21.
[41] *Id.* at 9.
[42] *Id.* at 26.
[43] US West's Supplemental Memorandum, Attachment A, at 3.
[44] *See, e.g., In the Matter of US West Communications, Inc., Range Telephone Cooperative, Inc., RT Communications, Inc., Tri-County Telephone Association, Inc., TCT West, and Union Telephone Company,* AAD 93-95 (1994) (*Range Tel.*) at 6. More recently, the Commission established a more definitive criterion for determining if granting a waiver request would harm the USF support program: "no waiver should cause an annual aggregate shift in USF assistance in an amount equal to or greater than one percent of the total USF, unless the parties can demonstrate extraordinary public interest benefit. In order to prevent carriers from evading this limitation by desegregating a single large sale of exchanges into a series of smaller transactions that in the aggregate have the same effect on the USF, the one-percent condition must apply to all study area waivers granted to either carrier, as a purchaser or seller." *US West Communications, Inc. and Eagle Communications Joint Petition for Waiver,* AAD 94-27, FCC 95-4 (Released Jan. 5, 1995) at para. 14.
[45] *See* Jeffrey S. Bork's July 7, 1993 letter to Chief, Accounting and Audits Division.

tice and the opportunity to object, however, might not exist in the absence of individual Section 214 applications or study area waiver requests, both of which provide public notice and opportunity for comment. Under US West's proposal, states without jurisdiction over transfers of lines might have no notice at all of a transfer in their area. US West "pledges" that it will not consummate a transfer without first consulting the appropriate state authority.[46] It not clear, however, what consultation this pledge would assure.

24. Although US West has not provided a sufficient basis upon which to grant the blanket Section 214 authorization as proposed, the record before us leads us to conclude that, for small transfers of local exchanges, the public interest issues to be resolved for individual Section 214 authorizations will usually be either local in nature, and therefore most suitable for resolution by the state, or matters involving the Universal Service Fund. The latter issues are most effectively reviewed under the study area waiver process. A Part 36 waiver not only requires that there be no objection by the appropriate state authority[47] and that the USF not be adversely affected, but also that there be a separate public interest finding. This is essentially the same public interest finding required by Section 214 of the Act and Part 63 of our rules.[48] When study area waivers are required, review of the impact of transfers on the USF, the costs of rural services and prospects for upgrade of rural services may be more thorough than the review of these matters normally made pursuant to Section 214 applications.[49] Review of these issues for purposes of Section 214 authorization is usually limited to acceptance and incorporation of, or conditioned upon, prior grant of Part 36 study area waivers when such grants are required.[50] We agree with US West that in cases for which the transfer involves no more than 1000 lines and for which Part 36 study area waivers must be obtained, requiring separate, individual Section 214 authorizations is duplicative and burdensome. Since extremely small and increasingly frequent transfers are being made subject to these duplicative procedures, relief is warranted.[51]

25. Therefore, we will grant US West blanket authorization under Section 63.62(g) of our rules for discontinuances arising in the course of transfers to carriers with whom US West has no affiliation, if: 1) the transfers involve no more than 1000 lines; 2) there is no termination or interruption of existing services; 3) the relevant state commission does not object to the transfer;[52] and 4) waiver of the definition of study area under Part 36 has been granted for all areas involved in the transfer under the Part 36 study area waiver standards stated in *US West Communications, Inc. and Eagle Communications Joint Petition for Waiver*, AAD 94-27, FCC 95-4 (Released Jan. 5, 1995).

E. Legal Requirements for Blanket Authorization -- Discussion

26. There remains the question of whether the Commission can grant blanket Section 214 certification under Section 63.62(g) of its rules. Ronan's objection that subsection 63.62(g) requires a formal application is incorrect, because, while an inadvertent typographical change made in 1963 makes Ronan's reading of the rule possible, the Commission never intended that result. The language of Section 63.62(g) first appeared as a provision creating an exception to the formal application requirement otherwise mandated for the kinds of discontinuance listed in Section 63.62.62. It stated in full:

> *Provided, however,* That an application may be filed requesting authority to make a type of reduction in service under specific standards and conditions in lieu of individual applications for each instance coming within the type of reduction in service proposed.[53]

27. In November of 1963, the provision was revised to its present form. The change was made as part of a general "editorial revision of ...[the Commission's] rules and regulations, and the opportunity for such revision afforded by the reprinting of Title 47 of the code of Federal Regulations." The revisions were made to facilitate cross-referencing.[54] The changes were "editorial in nature, and hence ... compliance with the notice, procedural, and effective date provisions of section 4 of the Administrative Procedures Act ...[was] unnecessary."[55] The changes were not intended to alter the substance of the rule and, indeed, could not have altered it without violating the Administrative Procedures Act. Therefore, the language of Section 63.62(g) must be interpreted as originally intended. It is a provision for blanket discontinuance authorizations, not requiring formal application under Section 63.505 or any of the other application content requirements cross-referenced in Section 63.62.[56]

28. Of course, even where a duly adopted regulation allows an agency to grant blanket authorizations, the APA may still require notice and comment rule making proceedings for any blanket authorization the agency grants if

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[46] US West reply comments at 3.

[47] *See* para. 11 above, where a condition of Part 36 study area waivers is that there be no objection from the state commission exercising jurisdiction over the lines to be transferred.

[48] *See, e.g., In the Matter of Policy to be Followed in Future Licensing of Facilities for Overseas Communications*, 67 FCC 2d 358, para. 32 (1977).

[49] *See, e.g., Range Tel*; *see also* note 42 above.

[50] *See, e.g., Order and Authorization*, W-P-D-378 (December 28, 1993) and *Order and Authorization*, W-P-D-379 (September 8, 1994).

[51] *See Memorandum Opinion and Order*, 7 FCC Rcd. 2161 (1992); *Memorandum Opinion and Order*, 7 FCC Rcd. 6076 (1992); *Memorandum Opinion and Order*, 8 FCC Rcd. 4449 (1993); *Memorandum Opinion and Order*, 8 FCC Rcd 6229 (1993); *Memorandum Opinion and Order*, 9 F.C.C.R. 194 (1994); *Memorandum Opinion and Order*, 9 F.C.C.R. 198 (1994); *Memorandum Opinion and Order*, 9 F.C.C.R. 202 (1994); *Memorandum Opinion and Order*, 9 F.C.C.R. 721 (1994).

[52] Because Part 36 study area waiver procedures offer ample notice and opportunity for objections from states, we see no reason to require an affirmative finding by states that waiver is in the public interest before authorization is granted.

[53] 18 Federal Register 318 (1953).

[54] 28 Federal Register 13002 (1963).

[55] *Id.*.

[56] This conclusion is further justified by the fact that Section 63.505 and the other application formats referenced in the first clause of Section 63.62 require information particular to individual transactions. Section 63.62(g), which under any reading provides only for authorizations by "type," would be rendered meaningless if applications pursuant to it had to contain the information required under Section 63.505 or those other formats. *See* 47 C.F.R. §§ 63.62, 63.505.

that authorization falls within the APA's broad definition of "rule."[57] Rule making is required where an order is primarily concerned with policy considerations leading to concrete proposals that will apply prospectively and generally rather than with evaluation of past events.[58] There is, however, an exception to the APA notice and comment rule making requirements for "interpretive rules."[59] Interpretive rules interpret an existing statute or existing legislative regulation.[60] We have determined above that, for a class of cases, our rule under Section 63.62(g) allows us to suspend case-by-case review under Section 63.62(a) through (f) only. We do *not* propose to suspend case-by-case review for purposes of Section 214 of the Communications Act. Rather, we have determined that individual review for purposes of Part 36 study area waiver requests, under the conditions specified for blanket authorization, satisfies the certification requirements of Section 214 of the Act. This is an interpretation of Section 214 and our regulations implementing it. The present blanket authorization does not require amendment of Part 63 of our rules, nor does it in any way exempt an unexamined class of cases from Part 63 of our rules. It preserves individual review pursuant to Section 214, which requires certification that neither the present nor future public necessity and convenience will be affected by discontinuance, a finding also required by Part 36 study area waivers. Therefore, insofar as the present blanket authorization under 63.62(g) may constitute a "rule" under 5 U.S.C. § 551, we find that it is "interpretive" and the procedures specified under 5 U.S.C. § 553 are not required.

III. CONCLUSION

29. For the reasons stated above, US West is authorized under Section 214 to discontinue services on lines transferred to carriers with no mutual affiliation if: (1) no more than 1000 lines are included in the transfer; (2) there is no termination or interruption of existing services; (3) the state commission exercising jurisdiction over telecommunications carriers does not object to the transfer; and (4) waiver of the definition of study area under Part 36 has been granted for all areas involved in the transfer under the Part 36 study area waiver standards stated in *US West Communications, Inc., and Eagle Communications Joint Petition for Waiver,* AAD 94-27, FCC 95-4 (Released Jan. 5, 1995).

IV. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED that the Petition of US West Communications under Section 214 of the Communications Act of 1934, as amended, for blanket authority under Section 63.62(g) of the Commission's rules, 47 C.F.R. § 63.62(g), and Section 214 of the Communications Act, 47 U.S.C. § 214, to discontinue service IS GRANTED, SUBJECT TO THE CONDITIONS STATED HEREIN.

31. IT IS FURTHER ORDERED that US West's petition for a declaratory ruling IS DENIED.

32. IT IS FURTHER ORDERED that, pursuant to 47 C.F.R. § 1.103(a), this order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

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[57] 5 U.S.C. §§ 551, 553. The Commission has previously established, through formal rule makings, blanket Section 214 authorizations or authorization procedures for: (1) an annual program of improvements, 47 C.F.R. § 63.06; (2) construction of lines by non-dominant carriers, 47 C.F.R. § 63.07; and (3) provision of lines by a carrier outside its service area for its own cable television service, for non-common carrier services, or for sale to an unaffiliated party, 47 C.F.R. § 63.08. These rules establishing blanket authorizations refer to construction or extension of lines. Section 63.62(g) applies only to discontinuances.

[58] *See American Exp. Co. v. U.S.,* 472 F.2d 1050 (1973) and *PBW Stock Exchange, Inc. v. Securities and Exchange Commission,* 485 F.2d 718, *cert. denied,* 94 S. Ct. 1992 (1974).

[59] 5 U.S.C. § 553(b)(3)(A).

[60] *Energy Consumers and Producers Ass'n, Inc v. Department of Energy,* 632 F.2d 129 (1980), *cert. denied* 101 S. Ct. 102 (1980).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IDB WorldCom Services, Inc. File No. I-T-C-95-233

For Authority Pursuant to
Section 214 of the
of the Communications Act,
as amended, to provide
International Telecommunications
Services between the
United States and North Korea

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 23, 1995; Released: June 8, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED, that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED, that application File No. I-T-C-95-233 IS GRANTED, and IDB WorldCom Services, Inc. (IDB) is authorized to:

a. lease from Comsat and operate up to thirty 64-kbps equivalent voice grade circuits (one E-1) between appropriately licensed U.S. earth stations and Intelsat Pacific Ocean satellites, connecting with similar facilities between the satellites and the Democratic Peoples Republic of Korea (North Korea), furnished by its correspondents;

b. lease and operate necessary connecting facilities in the United States;

c. lease a one-half interest in and operate any necessary overseas connecting facilities; and

d. use the facilities authorized herein, or on a switched transit basis via existing authorized facilities between the United States and third countries, to provide international switched voice and data services between the United States and North Korea.

3. IT IS FURTHER ORDERED that neither IDB nor any persons or companies directly or indirectly controlling or controlled by IDB, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which IDB or any persons or companies controlling or controlled by IDB are parties.

4. IT IS FURTHER ORDERED that our authorization of IDB to provide private lines as a part of its authorized services is limited to the provision of such private lines only between the United States and North Korea -- that is, private lines which originate in the United States and terminate in North Korea or which originate in North Korea and terminate in the United States. In addition, IDB may not -- and IDB's tariff must state that IDB's customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international switched basic services, unless authorized to do so by the Commission upon a finding that North Korea affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1994), *petition for reconsideration pending.*

5. IT IS FURTHER ORDERED that the applicant shall file copies of any operating agreements entered into with its foreign correspondents with the Commission within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51. Copies of any operating agreements shall also be filed with the U.S. Department of State and the U.S. Department of the Treasury.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203 and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of the public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ST. THOMAS AND SAN JUAN TELEPHONE CO. File No. I-T-C-95-217

Application for authority to acquire and operate facilities for service between the U.S. and Belgium, Australia, Mexico, Portugal and the Philippines.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 23, 1995; Released: June 8, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the United States and Belgium, Australia, Mexico, Portugal and the Philippines by the St. Thomas and San Juan Telephone Co. (STSJ).

2. Accordingly, IT IS ORDERED that application File No. I-T-C-95-217 IS GRANTED and STSJ is authorized to:

a. acquire on an Indefeasible Right of User basis a one-half interest in and operate the numbers of 64-kbps voice-grade circuits set forth in the Appendix;

b. lease and operate any necessary domestic connecting facilities;

c. lease a one-half interest in and operate any necessary overseas connecting facilities; and

d. use said facilities to provide STSJ's regularly authorized services between the United States and the points listed in the Appendix.

3. IT IS FURTHER ORDERED that our authorization of STSJ to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and one of the countries listed in the Appendix -- that is, private lines which originate in the United States and terminate in one of the countries listed in the Appendix or which originate in one of the countries listed in the Appendix and terminate in the United States. In addition, STSJ may not -- and STSJ's tariff must state that its customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international switched basic services, unless authorized to do so by the Commission upon a finding that the destination country affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1992), *petition for reconsideration pending.*

4. IT IS FURTHER ORDERED that neither STSJ nor any persons or companies directly or indirectly controlling or controlled by STSJ, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which STSJ or any persons or companies controlling or controlled by STSJ are parties.

5. IT IS FURTHER ORDERED that the applicant shall file copies of any operating agreements it enters into with its foreign correspondents with the Commission within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. §63.15(b).

9. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

APPENDIX

Country	No. of Circuits	Facility
Belgium	15	COLUMBUS II/EurAfrica/ TAT-11/Rioja
Australia	15	HAW-5/PacRimEast/Tasman II
Mexico	30	COLUMBUS II
Portugal	5	COLUMBUS II
Philippines	24	HAW-5/TPC-3/GPT

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SATELLITE COMMUNICATION SYSTEMS, INC. File No. I-T-C-95-218

Application for authority to acquire and operate facilities for provision of communications services between the United States and various overseas points.

CHERRY COMMUNICATIONS, INC. File No. I-T-C-95-286

Application for authority to acquire and operate facilities for provision of communications services between the United States and various overseas points.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 23, 1995; Released: June 8, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-95-218 and I-T-C-95-286 ARE GRANTED IN PART, and Satellite Communication Systems, Inc. (SCSI) and Cherry Communications, Inc. (CCI) are authorized to:

a. establish channels of communication between appropriately licensed U.S. earth stations and INTELSAT satellites, for provision of Intelsat Business Services (IBS), International Television Service and Datanet Service between the United States and the international points listed in Comsat's tariffs for the space segment of these services;

b. lease from Comsat and operate the satellite circuits specified in Appendix A, between appropriately licensed U.S. earth stations and INTELSAT Atlantic and Pacific Ocean Region satellites, connecting with similar facilities between the satellites and the overseas points listed in Appendix A, furnished by their correspondents;

c. lease from PanAmerican Satellite Corp. (PAS) and operate the satellite circuits specified in Appendix B, between appropriately licensed U.S. earth stations and the PAS-1, PAS-2 and PAS-4 satellites, connecting with similar circuits between the satellites and the overseas points listed in Appendix B, furnished by their correspondents;

d. lease from the Columbia/TDRSS International Satellite System (TDRSS) and operate the satellite circuits specified in Appendix C, between appropriately licensed U.S. earth stations and the TDRS-41 and TDRS-174 satellites, connecting with similar circuits between the satellites and the overseas points listed in Appendix C, furnished by their correspondents;

e. lease from Orion Satellite Corporation (Orion) and operate the satellite circuits specified in Appendix D, between appropriately licensed U.S. earth stations and the Orion F1 satellite, connecting with similar circuits between the satellite and the overseas points listed in Appendix D, furnished by their correspondents;

f. lease and operate necessary connecting facilities in the United States;

g. lease a one-half interest in and operate any necessary overseas connecting facilities; and

h. use the facilities authorized in b, c, d, and e, above to provide regularly authorized services, including switched voice and data, and private line services, between the United States and the points specified in Appendices A, B, C, and D, above.

i. establish channels of communications between appropriately licensed U.S. earth stations and U.S. domestic satellites (also Anik satellites for service to Canada, and Mexican domestic satellites for service to Mexico), for provision of authorized transborder services between the United States and the points listed in Appendix E.

3. IT IS FURTHER ORDERED that neither SCSI nor CCI nor any persons or companies directly or indirectly controlling or controlled by SCSI or CCI, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which SCSI or CCI or any persons or companies controlling or controlled by SCSI or CCI are parties.

4. IT IS FURTHER ORDERED that our authorization of SCSI and CCI to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and the countries listed in the Appendices -- that is, private lines which originate in the United States and terminate in one of the countries listed in the Appendices or which originate in one of the countries listed in the Appendices and terminate in the United States. In addition, SCSI and CCI may not -- and SCSI and CCI's tariff must state that its customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that the destination country affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559

(1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1994), *petition for reconsideration pending.*

5. IT IS FURTHER ORDERED that the applicants shall file copies of any operating agreements entered into with their foreign correspondents with the Commission within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. §203 and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that the applicants shall file separate Section 214 applications for any additional circuits they seek to operate via the PAS-1,. PAS-2, PAS-4, TDRS-41, TDRS-174 or Orion F1 satellites.

9. IT IS FURTHER ORDERED that the number of circuits authorized herein for the provision of services via separate satellite systems is subject to limitations on the number of circuits specified under the separate systems policy and applicable consultations under Article XIV(d) of the INTELSAT Agreement.

10. IT IS FURTHER ORDERED that action on the applicants' requests to acquire Morelos and Solidaridad circuits to countries in addition to Mexico is hereby DEFERRED pending the outcome of the Notice of Proposed Rulemaking in *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems,* IB Docket No. 95-41, FCC 95-146, released April 25, 1995.

11. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

APPENDIX A

COUNTRIES TO BE SERVED VIA INTELSAT
(NUMBERS ARE 64-KBPS CIRCUITS)

Country	Circuits	Country	Circuits	Country	Circuits
Argentina	80	Haiti	80	Poland	80
Australia	80	Honduras	80	Portugal	80
Austria	80	India	80	Romania	80
Bahamas	80	Indonesia	80	Saudi Arabia	80
Barbados	80	Iran	80	Senegal	80
Belgium	80	Ireland	80	Singapore	80
Bolivia	80	Israel	80	Somalia	80
Brazil	80	Italy	80	South Africa	80
Canada	80	Jamaica	80	Spain	80
Czech Republic	80	Japan	80	Sweden	80
		Jordan	80	Switzerland	80
Chile	80	Kenya	80	Syria	80
China, People's Republic	80	Korea, Republic of	80	Taiwan	80
				Thailand	80
Croatia	80	Kuwait	80	Trinidad & Tobago	80
Denmark	80	Lebanon	80		
Dominican Republic	80	Liechtenstein	80	Uganda	80
		Luxembourg	80	United Arab Emirates	80
Ecuador	80	Malaysia	80		
Egypt	80	Mexico	80	United Kingdom	80
El Salvador	80	Morocco	80		
Ethiopia	80	Netherlands	80	Uruguay	80
Finland	80	Netherlands Antilles	80	Vietnam	80
France	80			Venezuela	80
Guantanamo Bay	80	New Zealand	80	Macedonia, FYRO	80
		Nicaragua	80	Zaire	80
Germany, Federal Republic of	80	Norway	80	Serbia & Montenegro	80
		Panama	80	Slovenia	80
Ghana	80	Peru	80		
Greece	80	Philippines	80		
Guatemala	80	Bosnia-Herzegovenia	80		
Guinea	80				

APPENDIX B
COUNTRIES TO BE SERVED VIA PAS SATELLITES

Via PAS-1--Up to ten 64-kbps voice-grade circuits to each of the following points, not interconnected with the public switched network:

Ku-band countries

Anguilla
Austria
Azerbaijan
Bahamas
Belgium
Bermuda
Bosnia-Herzegovenia
British Virgin Is.
Cayman Islands
Croatia
Czech Republic
Denmark
France
Germany
Greece
Ireland
Italy
Luxembourg
Macedonia, FYRO
Monaco
Montserrat
Netherlands
Portugal
Romania
Russian Federation
Serbia & Montenegro
Slovenia
Spain
Sweden
Switerland
Turks & Caicos Islands
United Kingdom

C-band countries

Anguilla
Argentina
Aruba
Bahamas
Barbados
Bermuda
Bolivia
Brazil
British Virgin Is.
Cayman Islands
Chile
Colombia
Costa Rica
Dominican Republic
Ecuador
Guatemala
Haiti
Honduras
Jamaica
Mexico
Montserrat
Netherlands Antilles
Panama
Paraguay
Peru
Trinidad & Tobago
Turks & Caicos Islands
Uruguay
Venezuela

Up to six 64-kbps voice-grade circuits to each point interconnected with the public switched network:

Ku-band countries	C-band countries
Azerbaijan	Bahamas
Bahamas	Costa Rica
Bosnia-Herzegovenia	Dominican Republic
Czech Republic	Panama*
Macedonia, FYRO	Peru
Portugal	
Romania	
Russian Federation	
Serbia & Montenegro	
United Kingdom	

* SCSI is authorized to establish up to four T-1 (94 64-kbps) circuits between the United States and Panama.

Via PAS-2--Up to ten 64-kbps voice-grade circuits to the United Kingdom, not interconnected with the public switched network and up to six 64-kbps voice-grade circuits to the United Kingdom, interconnected with the public switched network.

Via PAS-4--Up to ten 64-kbps voice-grade circuits, not interconnected with the public switched network, and up to six 64-kbps voice-grade circuits, interconnected with the public switched network, to each of the following points:

Australia
Hong Kong
New Zealand

APPENDIX C
COUNTRIES TO BE SERVED VIA TDRS SATELLITES

Up to ten 64-kbps voice-grade circuits to each of the following points, not interconnnected with the public switched network:

TDRS-41

Austria
Bahamas
Belgium
Bosnia-Herzegovenia
Canada
Denmark
Finland
France
Germany
Ireland
Israel
Jamaica
Liechtenstein
Luxembourg
Macedonia, FYRO
Mexico
Netherlands
Portugal
Serbia & Montenegro
Sweden
Switzerland
Turkey
United Kingdom

TDRS-174

Hong Kong
Japan
Mexico
Philippines
Republic of Korea

Up to six 64-kbps voice-grade circuits to each of the following points, interconnected with the public switched network:

TDRS-41	TDRS-174
Germany	Hong Kong
Bosnia-Herzegovenia	
Macedonia, FYRO	
Serbia & Montenegro	
United Kingdom	

APPENDIX D
COUNTRIES TO BE SERVED VIA ORION F1 SATELLITE

Up to ten 64-kbps voice-grade circuits to each of the following points, not interconnected with the public switched network:

Austria
Belgium
Denmark
France
Germany
Ireland
Italy
Luxembourg
Macedonia, FYRO
Netherlands
Norway
Poland
Serbia & Montenegro
Sweden
United Kingdom

Up to six 64-kbps voice-grade circuits to each of the following points, interconnected with the public switched network:

Germany
Ireland
Netherlands
Poland
Sweden

APPENDIX D

COUNTRIES TO BE SERVED VIA AUTHORIZED
U.S. DOMESTIC SATELLITES, MEXICAN MORELOS (AND SOLIDARIDAD)
SATELLITES, AND ANIK SATELLITES

Anguilla	Domestic Satellites
Antigua and Barbuda	Domestic Satellites
Bahamas	Domestic Satellites
Barbados	Domestic Satellites
Belize	Domestic Satellites
Bermuda	Domestic Satellites
British Virgin Islands	Domestic Satellites
Canada	Domestic Satellites, ANIK
Cayman Islands	Domestic Satellites
Dominica	Domestic Satellites
Grenada	Domestic Satellites
Grenadines	Domestic Satellites
Mexico	DomSats, Morelos and Solidaridad
Montserrat	Domestic Satellites
Netherlands Antilles	Domestic Satellites
St. Kitts & Nevis	Domestic Satellites
St. Lucia	Domestic Satellites
St. Vincent	Domestic Satellites
Turks & Caicos	Domestic Satellites
Venezuela	Domestic Satellites

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T CORP. File No. I-T-C-95-227

Application for authority to
acquire and operate capacity
in the PTAT-1 Cable System.

ORDER AND AUTHORIZATION

Adopted: May 23, 1995; Released: June 8, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-95-227 IS GRANTED, and AT&T Corp. (AT&T) is authorized to:

a. acquire on an Indefeasible Right of User (IRU) basis a one-half interest in and operate an additional two E-1[1] circuits in the PTAT-1 Cable System;

b. acquire by lease, or other comparable means, a one-half interest in and operate necessary overseas connecting facilities; and

c. activate and operate these facilities to provide AT&T's regularly authorized services between the United States and Ireland.

3. IT IS FURTHER ORDERED that this authorization is subject to the terms and conditions of any order for the PTAT-1 cable, issued under the act entitiled "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. §§34-39).

4. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

[1] An E-1 circuit is equivalent to a capacity of 2.048 Mbps or 30 64-kbps voice-grade circuits.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

VYVX, INC. File No. I-T-C-95-245

Application for authority to acquire and operate facilities for provision of International Television and video services.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 30, 1995; Released: June 8, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-95-245 IS GRANTED, and Vyvx, Inc. (Vyvx) is authorized to establish channels of communication between appropriately licensed U.S. earth stations and INTELSAT Atlantic and Pacific Ocean Region satellites and the PAS-1, PAS-2 and PAS-4 satellites for provision of International Television and video services between the United States and those points listed in Comsat's tariff for the space segment of International Television Service and those countries which the Pan American Satellite System is authorized to serve for the provision of International Television and video services.

3. IT IS FURTHER ORDERED that neither Vyvx nor any persons or companies directly or indirectly controlling or controlled by Vyvx, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which Vyvx or any persons or companies controlling or controlled by Vyvx are parties.

4. IT IS FURTHER ORDERED that the applicants shall file copies of any operating agreement it enters into with its foreign correspondents with the Commission within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

5. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

7. IT IS FURTHER ORDERED that the applicant shall file a separate Section 214 application for any additional circuits it seeks to operate via the PAS-1, PAS-2 or PAS-4 satellites

8. IT IS FURTHER ORDERED that the facilities authorized herein for the provision of services via separate satellite systems is subject to limitations on the number of circuits specified under the separate systems policy and applicable consultations under Article XIV(d) of the INTELSAT Agreement.

9. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T CORP. File No. I-T-C-95-247

Application for authority to convey capacity in the TAT-9 and TAT-11 Cable Systems.

ORDER AND AUTHORIZATION

Adopted: May 30, 1995; Released: June 8, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-95-247 IS GRANTED, and AT&T Corp. (AT&T) is authorized to:

a. convey to MFS International, Inc. (MFS) on an Indefeasible Right of User (IRU) basis a one-half interest in 120 MAUOs[1] of capacity in the TAT-9 Cable System between Manahawkin, New Jersey and Goonhilly, United Kingdom; and

b. convey to MFS on an IRU basis a one-half interest in seven MIUs[2] of capacity in the TAT-11 Cable System between Manahawkin, New Jersey and Oxwich Bay, United Kingdom.

3. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

[1] A MAUO is a 64-kbps circuit equivalent.

[2] A MIU is a unit designated as the minimum unit of investment in the HAW-5 and TPC-4 Cable Systems, allowing the use of 2.048 Mbps (30 MAUOs) and the additional 162,539.68 bps required for multiplexing in each direction. A MAUO is a 64-kbps circuit equivalent.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRANSWORLD COMMUNICATIONS (USA), INC. File No. I-T-C-95-235

Application for authority to acquire and operate facilities for service to various overseas points.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 30, 1995; Released: June 8, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File no. I-T-C-95-235 IS GRANTED, and Transworld Communications (USA), Inc. (Transworld) is authorized to:

a. acquire on an Indefeasible Right of User (IRU) or ownership basis a one-half interest in and operate the cable facilities set forth in the Appendix hereto:

b. lease and operate any necessary domestic connecting facilities;

c. lease a one-half interest in and operate any necessary overseas connecting facilities; and

d. use said facilities to provide CTS' regularly authorized services, including switched voice and data and private line services, between the United States and the points listed in the Appendix hereto.

3. IT IS FURTHER ORDERED that Transworld is authorized to lease the cable facilities specified in the Appendix subject to the following conditions: (1) it is not practicable for Transworld to acquire the facilities on an IRU or ownership basis; and (2) the foreign correspondent providing the matching half-circuits owns the facilities and is a duly authorized carrier.

4. IT IS FURTHER ORDERED that neither Transworld nor any persons or companies directly or indirectly controlling or controlled by Transworld, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which Transworld or any persons or companies controlling or controlled by Transworld are parties.

5. IT IS FURTHER ORDERED that our authorization of Transworld to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and one of the countries listed in the Appendix hereto -- that is, private lines which originate in the United States and terminate in one of the countries listed in the Appendix hereto or which originate in one of the countries listed in the Appendix hereto and terminate in the United States. In addition, Transworld may not -- and Transworld's tariff must state that its customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic switched services, unless authorized to do so by the Commission upon a finding that the destination country affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1992), *petition for reconsideration pending.*

6. IT IS FURTHER ORDERED that applicant shall file copies of any operating agreement it enters into with its foreign correspondent with the Commission within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

7. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

8. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

9. IT IS FURTHER ORDERED that this authorization is issued subject to the terms and conditions of any license for the CANUS-1 or NPC-1 cable system issued herein under the Act entitled "An Act relating to the landing and operation of submarine cables in the United States," 47 U.S.C. §§ 34-39.

10. IT IS FURTHER ORDERED that the applicant shall file an application pursuant to Section 214 of the Communications Act of 1934, as amended, before adding any circuits or channels of communication for the provision of service over any private cable system in which circuits are authorized herein.

11. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

APPENDIX

ATLANTIC OCEAN REGION

Destination	Cable System	No. of Circuits
United Kingdom	CANUS-1/CANTAT-3	3 E-1s
	TAT-11	2 E-1s
	TAT-12/13	2 E-1s
	PTAT-1	3 E-1s
Germany	CANUS-1/CANTAT-3	2 E-1s
	TAT-10	3 E-1s
France	TAT-9	1 E-1
	TAT-11	1 E-1
	TAT-12/13	1 E-1
Netherlands	TAT-10	1 E-1
	TAT-12/13	1 E-1
Denmark	CANUS-1/CANTAT-3	1 E-1
	TAT-10	1 E-1
	Germany-Denmark-1	1 E-1
Spain	Columbus-II	1 E-1
	TAT-9	1 E-1
	TAT-12/13	1 E-1
Italy	Columbus-II	1 E-1
	TAT-9	1 E-1
	MAT-2	1 E-1
	TAT-12/13	1 E-1
Portugal	Columbus-II	1 E-1
	TAT-9	1 E-1
Greece	Columbus-II/EMOS-1	1 E-1
	TAT-9/MAT-2	1 E-1
Turkey	Columbus-II/EMOS-1	1 E-1s
	TAT-9/MAT-2	2 E-1
Israel	Columbus-II/EMOS-1	1 E-1
	TAT-9/MAT-2	1 E-1
Bermuda	PTAT-1	1 E-1
Azerbaijan	TAT-10	2 DS-1s
Austria	TAT-10	3 DS-1s
Belarus	TAT-10	2 DS-1s
Belgium	TAT-10	1 E-1
	TAT-12/13	1 E-1
Bulgaria	TAT-10	3 DS-1s
Czech Republic	TAT-10	3 DS-1s
Estonia	TAT-10	2 DS-1s

Destination	Cable System	No. of Circuits
Finland	TAT-10	2 E-1s
	Germany-Denmark-1	2 E-1s
Georgia	TAT-10	2 DS-1s
Hungary	TAT-10	3 DS-1s
Ireland	CANUS-1/CANTAT-3	1 E-1
	PTAT-1	1 E-1
Kazakhstan	TAT-10	2 DS-1s
Kyrghystan	TAT-10	2 DS-1s
Latvia	TAT-10	2 DS-1s
Liechtenstein	TAT-12/13	2 DS-1s
Lithuania	TAT-10	2 DS-1s
Monaco	TAT-11	2 DS-1s
Norway	TAT-10	4 DS-1s
Poland	TAT-10	3 DS-1s
Romania	TAT-10	3 DS-1s
Russia	TAT-10	2 E-1s
	TAT-12/13	1 E-1
San Marino	Columbus-II	2 DS-1s
Slovakia	TAT-10	2 DS-1s
Sweden	TAT-10	2 E-1s
	Germany-Denmark-1	2 E-1s
Switzerland	TAT-10	1 E-1
	TAT-12/13	1 E-1
Tajikistan	TAT-10	2 DS-1s
Turkmenistan	TAT-10	2 DS-1s
Ukraine	TAT-10	6 DS-1s
Uzbekistan	TAT-10	2 DS-1s
Vatican	TAT-12/13	2 DS-1s
Serbia & Montenegro	TAT-12/13	3 DS-1s
Bosnia-Herzegovenia	TAT-12/13	3 DS1s
Slovenia	TAT-12/13	3 DS1s
Macedonia, FYRO	TAT-12/13	3 DS1s
Croatia	TAT-12/13	3 DS1s

PACIFIC OCEAN REGION

Destination	Cable System	No. of Circuits
Japan	NPC-1	1 E-1
	TPC-4	2 E-1s
	TPC-5	2 E-1s
Hong Kong	NPC-1	1 E-1
	Miura-Chikura Japan Tie Cable	1 E-1
	HJK	1 E-1
Philippines	NPC-1	1 E-1
	Miura-Chikura Japan Tie Cable	1 E-1
	TPC-3 (Japan-Guam)	1 E-1
	GPT	1 E-1
Singapore	NPC-1	1 E-1
	Kyushu-Miura Japan Tie Cable	1 E-1
	APC	1 E-1
South Korea	NPC-1	1 E-1
	Miura-Chikura Japan Tie Cable	1 E-1
	HJK	1 E-1
Australia	Haw-5	1 E-1
	PacRim East	1 E-1
	Tasman-2	1 E-1
New Zealand	Haw-5	1 E-1
	PacRim East	1 E-1
Hawaii	TPC-5	2 E-1s
	Haw-4	1 E-1
	Haw-5	1 E-1
Guam	TPC-5	3 E-1s

LATIN AMERICAN REGION

Destination	Cable System	No. of Circuits
Costa Rica	Columbus-II	3 DS-1s
El Salvador	Columbus-II	3 DS-1s
Guatemala	Columbus-II	3 DS-1s
Honduras	Columbus-II	3 DS-1s
Mexico	Columbus-II	2 E-1s
Nicaragua	Columbus-II	3 DS-1s
Panama	Columbus-II	4 DS-1s
Puerto Rico	Americas-I Taino-Caribe	1 E-1 1 E-1
St. Thomas	Americas-1	3 DS-1s

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

HARRIS CORPORATION File No. I-T-C-95-236

Application for authority to acquire and operate satellite facilities for service to various overseas points.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 30, 1995; Released: June 8, 1995

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-95-236 IS GRANTED, and Harris Corporation (Harris) is authorized to:

a. lease from Comsat and operate the satellite circuits specified in Appendix A, between appropriately licensed U.S. earth stations and INTELSAT Atlantic and Pacific Ocean Region satellites, connecting with similar facilities between the satellites and the overseas points listed in Appendix A, furnished by its correspondents;

b. lease from the Columbia/TDRSS International Satellite System (TDRSS) and operate the satellite circuits specified in Appendix B, between appropriately licensed U.S. earth stations and the TDRS-41 satellite, connecting with similar circuits between the satellite and the overseas points listed in Appendix B, furnished by its correspondents;

c. lease and operate any necessary domestic connecting facilities;

d. lease a one-half interest in and operate any necessary overseas connecting facilities; and

e. use the facilities in a, b, c and d, above, to provide regularly authorized services, including switched voice and data and private line services, between the United States and the points listed in the Appendices.

3. IT IS FURTHER ORDERED that neither Harris nor any persons or companies directly or indirectly controlling or controlled by Harris, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which Harris or any persons or companies controlling or controlled by Harris are parties.

4. IT IS FURTHER ORDERED that our authorization of Harris to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and the countries listed in the Appendices -- that is, private lines which originate in the United States and terminate in one of the countries listed in the Appendices or which originate in one of the countries listed in the Appendices and terminate in the United States. In addition, Harris may not – and Harris's tariff must state that its customers may not – connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international switched basic services, unless authorized to do so by the Commission upon a finding that the destination country affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1994), *petition for reconsideration pending.*

5. IT IS FURTHER ORDERED that the applicant shall file copies of any operating agreements entered into with its foreign correspondents with the Commission within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203 and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. §63.15(b), for the common carrier facilities authorized herein.

9. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

10. IT IS FURTHER ORDERED that the applicant shall file a separate Section 214 application for any additional circuits it seeks to operate via the TDRS-41 satellite.

11. IT IS FURTHER ORDERED that the number of circuits authorized herein for the provision of services via separate satellite systems is subject to limitations on the number of circuits specified under the separate systems policy and applicable consultations under Article XIV(d) of the INTELSAT Agreement.

12. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

APPENDIX A
COUNTRIES TO BE SERVED VIA INTELSAT

Up to 12 64-kbps voice-grade circuits to each point:

Afghanistan
Albania
Algeria
Angola
Argentina
Armenia
Australia
Austria
Azerbaijan
Bahamas
Bahrain
Bangladesh
Barbados
Belgium
Belarus
Benin
Bhutan
Bolivia
Bosnia-Herzegovenia
Brazil
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Cape Verde
Central African R
Chad
Chile
China, People's Rep.
Colombia
Congo
Costa Rica
Cote d'Ivoire
Croatia
Cyprus
Czech Republic
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Estonia
Ethiopia
Fiji
Finland
France
Gabon
Georgia
Germany
Ghana
Greece
Guatemala
Guinea
Haiti
Honduras
Hungary
Iceland
India
Indonesia
Iran, Islamic Rep. of
Iraq
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kazakhstan
Kenya
Korea, Rep. of
North Korea
Kuwait
Kyrgyzstan
Latvia
Lebanon
Libya
Liechtenstein
Lithuania
Luxembourg
Macedonia , FYRO
Madagascar
Malawi
Malaysia
Mali
Malta
Mauritania
Mauritius
Mexico
Micronesia
Monaco
Mongolia
Morocco
Mozambique
Namibia
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Rwanda
Saudi Arabia
Senegal
Serbia & Montenegro
Singapore
Slovakia
Slovenia
Somalia
South Africa
Spain
Sri Lanka
Sudan
Swaziland
Sweden
Switzerland
Syria
Tajikistan
Tanzania
Thailand
Togo
Trinidad & Tobago
Tunisia
Turkey
Turkmenistan
Uganda
Ukraine
United Arab Emirates
United Kingdom
Uruguay
Uzbekistan
Vatican City
Venezuela
Vietnam
Yemen Arab Rep.
Zaire
Zambia
Zimbabwe

APPENDIX B
COUNTRIES TO BE SERVED VIA TDRS-41

Up to ten 64-kbps voice-grade circuits to each of the following points, not interconnected with the public switched network:

Albania
Austria
Azerbaijan
Bahamas
Belgium
Bosnia-Herzegovenia
Bulgaria
Burundi
Canada
Denmark
Estonia
Finland
France
Germany
Ireland
Israel
Jamaica
Kazakhstan
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Macedonia, FYRO
Mexico
Mongolia
Metherlands
North Korea
Portugal
Serbia & Montenegro
Slovakia
Slovenia
Sweden
Switzerland
Tajikistan
Turkey
Turkmenistan
Ukraine
United Kingdom
Uzbekistan

Up to six 64-kbps voice-grade circuits to each of the following points interconnected with the public switched network:

Albania
Belarus
Bosnia-Herzegovenia
Bulgaria
Burundi
Estonia
Georgia
Germany
Kazakhstan
Kyrgyzstan
Latvia
Lithuania
Macedonia, FYRO
Mongolia
North Korea
Serbia & Montenegro
Slovakia
Slovenia
Tajikistan
Turkmenistan
Ukraine
United Kingdom
Uzbekistan

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-500

In the Matter of

Amendment of Section 73.202(b) RM-6070
Table of Allotments,
FM Broadcast Stations
(Stephenson, Michigan)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 1, 1995; Released: June 9, 1995

By the Chief, Policy and Rules Division:

1. We now address a Petition for Reconsideration filed by Value Radio Corporation ("Value") seeking reconsideration of the Commission's action amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, 47 C.F.R. §73.202(b), to substitute Channel 292C2 for Channel 272A at Stephenson, Michigan. *See Report and Order* in MM Docket No. 89-500, 6 FCC Rcd 2142 (1991). Essentially, Value requests that the Commission set aside the amendment to the FM Table of Allotments in order to reconsider its proposal to allot Channel 272C2 to Stephenson rather than Channel 292C2 to accommodate, among other things, its upgrade proposal for its station, WMGV(FM), then operating on Channel 280A at Oshkosh, Wisconsin.[1] WinCom Wisconsin Limited Partnership ("WinCom") filed an opposition to the petition for reconsideration supporting the Commission's action in MM Docket No. 89-500.

2. Subsequent to the filing of the petition for reconsideration, the Commission issued a *Report and Order* in MM Docket No. 90-139, DA 95-224 (released February 21, 1995) which, among other things, effectuated Value's proposal. Channel 280C3 was substituted for Channel 280A at Oshkosh, Wisconsin; Channel 280C3 was reallotted from Oshkosh to Winneconne, Wisconsin; and the license for Station WMGV(FM) was modified to specify operation on Channel 280C3 at Winneconne. In addition, the alleged conflict between the allotment of Channel 292C2 at Stephenson and the use of Channel 291C3 in MM Docket No. 90-139 no longer exists.[2] Therefore, in light of this action taken in MM Docket No. 90-139, we conclude that the matters raised in Value's petition for reconsideration of the action taken in MM Docket No. 89-500 are moot.

3. Accordingly, pursuant to delegated authority, IT IS ORDERED that the petition for reconsideration filed by Value Radio Corporation and related filings in this proceeding ARE DISMISSED as moot.

4. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

5. For Further information concerning this proceeding, contact Alan E. Aronowitz, Mass Media Bureau, (202) 776-1653.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

[1] *See Notice of Proposed Rule Making* in MM Docket No. 90-139, 5 FCC Rcd 1763 (1990). Value, a co-petitioner in MM Docket No. 90-139, proposed the substitution of Channel 280C3 for Channel 280A at Oshkosh, Wisconsin; the reallotment of Channel 280C3 from Oshkosh to Winneconne, Wisconsin; and the modification of the license for Station WMGV(FM) to specify operation on Channel 280C3 at Winneconne. In its petition, Value states that the allotment of Channel 292C2, rather than Channel 272C2, at Stephenson effectively precludes its Oshkosh/Winneconne proposal.

[2] In MM Docket No. 90-139, Value suggested the allotment of Channel 291C3 to Townsend, Wisconsin, as an alternative channel to resolve a conflict between the mutually exclusive proposals in that proceeding. However, the need to use an alternative channel was obviated by the voluntary withdrawal of the counterproposal for an allotment at Townsend. *See Report and Order* in MM Docket No. 90-139, *supra*, at para.3.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-246

In the Matter of

Amendment of Section 73.606, Table of Allotments Television Broadcast Stations (Ridgecrest, California) RM-8091

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 1, 1995; Released: June 9, 1995

By the Chief, Policy and Rules Division:

1. The Commission has before it the Petition for Reconsideration filed by Valley Public Television ("Valley") of the *Report and Order* ("*R&O*")[1] in the above captioned proceeding. The *R&O* dismissed the petition for rule making filed by Valley requesting the substitution of Channel *41 for vacant Channel *25 (reserved for noncommercial use) at Ridgecrest, or, alternatively, requesting the placement of a site restriction on Channel *25 at Ridgecrest to accommodate Valley's application site for a new noncommercial station on Channel *39 at Bakersfield.

2. *Background.* Valley proposed the channel substitution at Ridgecrest to cure a short-spacing between the allotment site for Channel *25 at Ridgecrest and Valley's proposed Channel *39 site at Bakersfield. Valley stated that this would release Channel *25 for use in another community outside of the Los Angeles ATV freeze area. Alternatively, Valley suggested that Channel *25 be retained at Ridgecrest with a site restriction clearing Valley's Bakersfield Channel *39 application site. In further support of its proposal Valley pointed out that Channel *25 had never been applied for since its allotment 25 years prior. Community Television of Southern California ("CTSC") filed comments in opposition. Valley filed reply comments.

3. Subsequently, Valley and CTSC filed and were granted a joint petition for approval of settlement regarding their applications for Channel *39 at Bakersfield. That settlement provided in pertinent part, that each party's application be dismissed with prejudice, and that neither party file an application for a full service station to operate on Channel *39 at Bakersfield for five years unless an independent third party filed an application for such facility first. In view of that settlement, the Allocations Branch issued the *R&O* dismissing as moot the petition for rule making in the instant docket.

4. *Petition for Reconsideration.* Valley argues that the Commission should continue to consider the Ridgecrest proposal because it "wishes to be in a position to apply for the Channel *39 transmitter site as specified in its application for Bakersfield either at the end of the five year settlement period, or sooner, if the contingency terminating the settlement occurs." Valley argues that since the settlement agreement between it and CTSC was good for only five years, and contained the contingency involving an independent third party, the settlement was not final and the question with respect to Ridgecrest continues to be alive.

5. *Discussion.* Valley's request will be denied. The *R&O* properly dismissed the Ridgecrest proposal as moot. Since both applications for Channel *39 at Bakersfield were dismissed, and no other expression of interest in the Ridgecrest allotment was filed, there was no reason to make the allotment. Valley's interest in refiling its application for Channel *39 at Bakersfield at some indefinite future date does not provide adequate justification to warrant the change at Ridgecrest. Valley's argument that the proposal is alive is based on speculation. The Commission does not entertain speculative arguments with respect to requests to amend Table of Allotments. *See, e.g., Wickenburg, Arizona,* 10 FCC Rcd 1576 (1995).

6. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by Valley Public Television IS DENIED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 776-1653.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

[1] 8 FCC Rcd 7626 (Allocations Br. 1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-228

In the Matter of

Amendment of Section 73.202(b), RM-8295
Table of Allotments,
FM Broadcast Stations.
(Tawas City, Michigan)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 1, 1995; Released: June 9, 1995

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration a *Petition for Reconsideration* ("reconsideration"), filed by Patricia Mason ("Mason") of the *Report and Order* ("R&O"), 9 FCC Rcd 4794 (1994), in the above-captioned docket.[1] Mason requests reconsideration of our action substituting Channel 291A for Channel 297A at Tawas City, Michigan, modification of the license for Station WHST-FM to specify operation on Channel 291A, and allotment of Channel 277A to Tawas City. Ives Broadcasting, Inc. ("Ives") filed an opposition to the reconsideration. No other comments were received.

2. At the request of Ives, the *Notice of Proposed Rule Making*, 8 FCC Rcd 5217 (1993), in this proceeding proposed to substitute Channel 291A for Channel 297A at Tawas City, Michigan, and modify the license for Station WHST-FM to specify operation on Channel 291A. Ives requested the substitution because it was precluded from operating Channel 297A as a six kilowatt facility at its licensed site because of a short spacing to a Canadian Channel 297C allotment at Sault Ste. Marie, Ontario. Ives indicated that the short spacing resulted from the adoption of the increased separation distances for Class A stations in the *Second Report and Order*, MM Docket 88-375, 4 FCC Rcd 6375 (1989). Mason filed comments stating her intention to file an application for Channel 291A at Tawas City. Mason argued that Ives could operate Channel 297A at six kilowatts by relocating, and, since the new channel is not an adjacent channel upgrade, Channel 291A must be made available for competing applications. The *R&O* granted Ives' request for substitution of Channel 291A for Channel 297A at Tawas City and modification of its license for Station WHST-FM. In response to Mason's expression of interest in Channel 291A, Channel 277A was allotted to the community with a site restriction 4.8 kilometers (3 miles) north. The *R&O* pointed out that Commission Rules do not contemplate the filings of expressions of interest in proceedings, such as this one, which seek to make equivalent channel substitutions. However, since another channel was available, we did not believe the issuance of a new *Notice of Proposed Rule Making* would serve the public interest, with its attendant use of administrative resources and delay in initiating new service.

3. In her reconsideration, Mason contends that Channel 277A is restricted to three kilowatts and cannot be upgraded to a C3 facility but the applicant for Channel 291A may employ power of six kilowatts and be reclassified to C3 status. Therefore, Mason argues that the channels are not equivalent and she should have been allowed to file an application for Channel 291A. Further, Mason believes that the Commission does not have sufficient staff to evaluate each FM channel to compare its relative merit through study of actual site availability, likelihood of FAA approval, or local zoning laws. However, Mason argues that the Commission staff should be able to determine the discrepancies between channels, such as a doubling of power and where the potential to upgrade exists, showing that the channels are by no means equivalent. In these situations, competing applications must be considered.

4. Ives filed a timely opposition to the reconsideration. Ives points out that Mason raises the same arguments which were considered and resolved by the Commission's staff in the *R&O*. Ives argues that its proposal for Channel 291A allows for use of its present site which is in full compliance with all Commission Rules and environmental requirements. Ives states that although Mason contends that Ives can operate on Channel 297A at six kilowatts, it failed to demonstrate that sites are available which meet zoning and local building requirements. In response to Mason's concerns that the Commission allotted only a Class A channel for other applicants, Ives contends that the Commission properly restricts its examination to the class of channel requested at the time it is deciding a rule making proceeding and does not speculate as to all possible future modifications.[2]

5. After careful consideration of the pleadings filed in this proceeding, we find that Mason's reconsideration should be denied. Section 1.429 of the Commission's Rules sets forth the limited provisions under which the Commission will reconsider a rule making action. Reconsideration is warranted only if the petitioner cites error of fact or law, or has presented facts or circumstances which raise substantial or material questions of fact which otherwise warrant Commission review of its prior action. The Commission will not reconsider arguments that have already been considered. *Eagle Broadcasting Co. v. FCC*, 514 F.2d 852 (D.C. Cir. 1975). Mason has presented no arguments that were not raised in its original comments. Further, it has not shown any errors with respect to the facts or law. Mason has simply repeated the arguments initially advanced in its comments. Thus, there is no basis to set aside our earlier action granting the substitution of Channel 291A for Channel 297A and the allotment of Channel 277A in Tawas City. The Commission considers channels of the same class to be equivalent unless showings have been made that a station cannot be constructed for reasons such as environmental consequences or hazard to air navigation. *See Vero Beach, Florida*, 3 FCC Rcd 1049

[1] Public Notice of the Petition for Reconsideration was given on September 13, 1994.

[2] A staff engineering analysis indicates that Channel 277 can be upgraded, if site restricted, in compliance with Commission spacing requirements.

(1988), *rev. denied*, 4 FCC Rcd 2184, 2185 (1989). Mason has provided no evidence that Channel 277A, which was allotted to Tawas City as a six kilowatt channel in response to her comments, is an unusable channel. Further, Mason has failed to show any overriding public interest benefit in denying the modification of the license for Station WHST-FM, particularly when an additional channel is available which causes no disruption to any other proceeding and is immediately available for application. In any event, the filing of an application for Channel 277A at Tawas City by Mason, the party questioning the viability of the additional channel, would appear to indicate that Channel 277A is an acceptable channel.[3]

6. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by Patricia Mason IS DISMISSED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

[3] *See* BPH-941121MQ, Tawas City, Michigan, Channel 277A, at coordinates 44-21-06 and 83-31-39.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-497

In the Matter of

Amendment of Section 73.202(b),	RM-6877
Table of Allotments,	RM-7269
FM Broadcast Stations.	
(Apalachicola and Carrabelle, Florida)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 2, 1995; Released: June 9, 1995

By the Chief, Policy and Rules Division:

1. Before the Commission is a Petition for Reconsideration and Motion for Stay filed by Richard L. Plessinger ("Plessinger"), licensee of Channel 265A at Apalachicola, Florida, challenging the *Report and Order* in this proceeding, 6 FCC Rcd 7147 (1991), which allotted Channel 293C1 to Carrabelle, Florida, as that community's first local transmission service.[1] The *Report and Order* denied Plessinger's petition requesting the substitution of non-adjacent Channel 293C1 for Channel 265A at Apalachicola. No oppositions or reply comments were filed in response to Plessinger's petition for reconsideration. For reasons stated below, we will deny the petition for reconsideration.

2. *Background.* Pursuant to Plessinger's petition for rule making, we issued the *Notice of Proposed Rule Making*, 4 FCC Rcd 8119 (1989), proposing the substitution of non-adjacent Channel 293C1 for Channel 265A at Apalachicola, and the modification of his license for Station WOYS(FM) to specify the higher powered channel. B.F.J. Timm ("Timm"), permittee of Station WAPY(FM), Channel 288A, Apalachicola, Florida, filed an expression of interest in Channel 293C1 at Apalachicola.[2] Allen Audio ("Allen") filed a counterproposal requesting the allotment of Channel 293C1 to Carrabelle, Florida, as that community's first local FM transmission service.[3] In response to the counterproposal, Plessinger and Allen filed reply comments.

3. In the *Report and Order* we granted Allen's proposal after a Commission engineering analysis determined that there were no alternate channels available to accommodate both Plessinger and Allen's proposals. We did a comparative analysis of the two proposals using the Commission's FM allotment priorities.[4] Based on the FM allotment priorities, we determined that Allen's proposal for first local transmission service at Carrabelle would better serve the public interest than Plessinger's requested upgrade in service at Apalachicola. Thus, we allotted Channel 293C1 to Carrabelle, Florida, and denied Plessinger's petition to upgrade at Apalachicola.

4. *Petition for Reconsideration.* Plessinger argues that Allen failed to establish its credibility as an "interested person" or "party" to the proceeding. Therefore, he argues that Allen's counterproposal was legally deficient and was not entitled to comparative consideration. Plessinger states that the Commission should substitute Channel 293C1 for Channel 265A at Apalachicola, and suggests that Channel 265A be allotted to Carrabelle. Finally, Plessinger disputes the application of the allotment priorities in the *Report and Order*. He states that it is anomalous for the Commission to deny his proposal to upgrade on Channel 293C1. He further states that our analysis is particularly flawed in light of his offer to vacate Channel 265A for possible allotment to Carrabelle.

5. *Discussion.* After consideration of Plessinger's petition for reconsideration, we will deny his request for deletion of the allotment of Channel 293C1 to Carrabelle and the substitution of Channel 293C1 for Channel 265A at Apalachicola. We disagree with Plessinger's assertion in the petition for reconsideration that Allen failed to qualify as an "interested person" to the proceeding. As an initial matter, we note that Plessinger previously raised this contention, which we rejected, in the *Report and Order*.[5] As we stated in the *Report and Order*, Allen has qualified as an "interested person" because he filed a counterproposal that requested a mutually exclusive use for Channel 293C1 at Carrabelle. In addition, Allen stated his intention to apply for and build a station at Carrabelle, if granted the authorization to operate the channel. These actions were sufficient for the Commission's acceptance and comparative consideration of the counterproposal as an effective expression of interest in Channel 293C1.[6] Section 1.429 of the Commission's Rules set forth the limited provisions

[1] Public Notice of the filing of Plessinger's petition was given on February 18, 1992, Report No. 1878. In view of our action herein, we will dismiss the Motion for Stay of the filing window for Channel 293C1 at Carrabelle as moot.

[2] Timm filed a counterproposal in MM Docket No. 89-422 to substitute Channel 288C2 for Channel 288A at Apalachicolo and modification of the construction permit for Station WAPY(FM) to specify operation on Channel 288C2 (RM-7039). He stated that he would withdraw his expression of interest in Channel 293C1 at Apalachicola in this proceeding if he received an upgrade to Channel 288C2 in MM Docket No. 89-422. However, the Commission denied Timm's counterproposal for Channel 288C2. *See Report and Order, (Mary Esther, Apalachicola, and Crawfordsville, Florida)*, 7 FCC Rcd 1417 (1992).

[3] Public Notice of Allen's counterproposal was given on February 6, 1990, Report No. 1807, RM-7269.

[4] The Commission's FM allotment priorities are (1) First full-time aural service; (2) Second full-time aural service; (3) First local aural service; (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)]. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

[5] The *Report and Order* did not address Allen's status as a "person" for purposes of a rule making proceeding. Allen fulfilled the Communication Act's definition of a "person," which includes any individual, partnership, association or corporation.47 U.S.C. §153(i). This is evidenced by the signature of Mr. Allen Branch on both its comments and reply comments. Allen also satisfied the Commission's definition of a "party," which includes any person who participates in a proceeding by the timely filing of, *inter alia*, responsive pleadings. 47 C.F.R. §1.400.

[6] *See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lopez and Dushore, Pennsylvania)*, 7 FCC Rcd 854, 855 (1992).

under which the Commission will reconsider a rule making action. Reconsideration is warranted only if the petitioner cites error of fact of law, or he presents facts or circumstances which raise substantial or material questions of fact which otherwise warrant Commission review of its prior action. The Commission will not reconsider arguments that have already been considered. *See Eagle Broadcasting Co. v. FCC,* 514 F.2d 852 (D.C. Cir. 1975). Plessinger has presented no new arguments. Furthermore, he has not shown any facts that the Commission previously failed to consider or any errors with respect to the facts or law. Rather, he has simply repeated the arguments initially advanced in this proceeding. Thus, there is no basis to set aside our earlier decision which allotted Channel 293C1 to Carrabelle, Florida.[7]

6. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by Richard L. Plessinger, IS DENIED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

[7] We note that Plessinger has filed an application for Channel 293C1 at Carrabelle, Florida (BPH-920221MC), and he has also filed a one-step application to upgrade Station WOYS(FM) from Channel 265A to Channel 263C3 at Apalachicola, Florida (BPH940617IZ), both applications are pending.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-229

In the Matter of

Amendment of Section 73.202(b),	RM-8296
Table of Allotments,	RM-8463
FM Broadcast Stations.	
(Midway, Panacea and	
Quincy, Florida)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 2, 1995; **Released: June 9, 1995**

By the Chief, Allocations Branch:

1. At the request of EME Communications ("EME"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 5257 (1993), proposing the allotment of Channel 263A to Panacea, Florida, as that community's first local aural transmission service. EME filed comments and reply comments. Bitner-James Partnership ("BJP") permittee of Station WTPS(FM), Channel 264A, Quincy, Florida, filed a counterproposal proposing the allotment of alternate Channel 237A to Panacea, Florida; the substitution of Channel 264C3 for Channel 264A at Quincy, Florida, and the reallotment of Channel 264C3 from Quincy, Florida, to Midway, Florida, and the modification of Station WTPS(FM)'s construction permit to specify Midway, Florida, as its community of license.[2] Catamount Communications, Inc. ("Catamount"), licensee of Station WHKX, Channel 260C2, Lafayette, Florida, filed comments in response to the counterproposal.[3]

2. EME filed comments supporting the allotment of Channel 263A. However, it filed reply comments withdrawing its support for Channel 263A or Channel 237A to Panacea, Florida. EME states that it fully supports the counterproposal filed by BJP. Since, EME no longer has a bona fide interest in an allotment at Panacea, but rather supports BJP's proposal, we will not allot Channels 237A nor 263A to Panacea, Florida. Absent, a bona fide expression of interest, we will not allot a channel. *See Lopez and Dushore, Pennsylvania*, 7 FCC Rcd 854 (1992). Therefore, all comments filed in response to EME's proposal are now moot and will not be discussed.

3. BJP in its counterproposal seeks the substitution of Channel 264C3 for Channel 264A at Quincy, Florida, and the reallotment of Channel 264C3 from Quincy to Midway, Florida. It contends that Channel 264C3 cannot be allotted to Quincy, Florida, and serve 100% of the community of license, due to the site restriction needed to avoid short spacing to Station WJAQ(FM), Marianna, Florida. Furthermore, BJP states that the site restriction will enable Station WTPS(FM) to serve Midway, Florida, and provide a first local service to the community. BJP also notes that Midway is listed in the 1990 U.S. Census with a population of 852 persons. Midway is located in Gadsden County, which has a population of 41,105 persons. Midway is an incorporated community with a mayor, city hall, police department, volunteer fire department, post office, Planning and Zoning Commission, recreation department, schools, churches and a business district. Whereas Quincy, population 7,444 (1990 U.S. Census), also located in Gadsden County will continue to be served by full-time Stations WWSD(AM) and WFHT(FM). Therefore, Quincy will retain local service.

4. BJP seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a stations's authorization to specify a new community of license citing *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989) *recons. granted in part*, 5 FCC Rcd 7094 (1990). BJP states that the allotment of Channel 264C3 to Midway will result in a preferential arrangement of allotments. BJP claims that the reallotment of Channel 264C3 from Quincy, Florida, (population 7,444)[4] to Midway, Florida, (population 852) will permit the expansion of service by Station WTPS to provide service to an additional 147,792 persons, whereas the current Class A station provides service to only 98,551 persons. BJP contends that it proposes to relocate to Midway because it cannot upgrade and provide city grade coverage to Quincy. BJP argues that this proposal is consistent with the Commission's decision in *Zanesville and South Zanesville, Ohio*, 5 FCC Rcd 6726 (1990). In that case, Station WCVZ(FM), Zanesville proposed to upgrade at South Zanesville because it could not provide a city grade signal to Zanesville due to the site restriction imposed on the higher class channel. BJP states that the public would benefit from a large increase in coverage area as well as the provision of a first local service. These benefits could not be achieved if Station WTPS were to remain at Quincy. Midway nor Quincy is located within any urbanized area. BJP argues that WTPS(FM) is an unbuilt station and is eligible for a change in community of license since its construction permit was obtained through a settlement agreement, before the Administrative Law Judge's ("ALJ") Initial Decision was issued. WTPS remains unbuilt due to (1) the bankruptcy of the majority partner, Monte R. Bitner ("Bitner"); (2) the pending assignment of license to a new entity (BAPH-930702GK); and (3) the loss of its authorized transmitter site, which belonged to the bankrupt majority partner. A new transmitter site for the Class A channel has been negotiated and an application is to be filed by the new entity shortly.[5]

5. In its comments Catamount states that the Commission should deny or dismiss BJP's counterproposal for several reasons. Catamount argues that the construction permit for Station WTPS expired September 29, 1993, two

[1] The communities of Midway and Quincy, Florida, have been added to the caption.
[2] Public Notice of the counterproposal was given on April 20, 1994, Report No. 2006.
[3] Counsel to BJP filed a "Notice of Change of Address" which is Mullin, Rhyne, Emmons and Topel, P.C., 1225 Connecticut Avenue, N.W., Suite 300, Washington, D.C. 20036-2604.
[4] Population figures are taken from the 1990 U.S. Census.
[5] BJP filed an application for a 6 kilowatt station on October 10, 1993 (BPH-931027IB).

days after BJP filed its counterproposal. On that date BJP filed its second application to extend the permit (BMPH-930929JG). Catamount contends that the second application for extension, which remains pending failed to comply with 47 C.F.R. Section 73.3534(a), which requires the filing of such applications at least 30 days prior to the expiration date when the facts supporting the extension request are known in time to permit such filing. Catamount states that BJP made no showing in its extension application why it waited until the expiration date to file for an extension. Catamount argues that absent a valid and existing construction permit, the Commission cannot consider BJP's counterproposal to upgrade the Quincy channel or change its community of license, citing *Santa Margarita and Guadalupe, California,* 2 FCC Rcd 6930 (1987). Catamount states that a review of BJP extension application, as well as a pending application for assignment of the WTPS permit and related filings reveal that significant questions exist regarding BJP's qualifications and whether the Commission will reinstate or extend the WTPS permit. Catamount notes that Bitner has objected to the assignment of WTPS's permit to the James in a letter received at the Commission on August 13, 1993, and he also objected to the grant of the first extension of WTPS's permit. On March 29, 1994, the Commission directed BJP to provide additional information with respect to the pending extension and assignment applications within 30 days. Catamount claims that BJP filed for bankruptcy on April 8, 1992, and a trustee was appointed shortly thereafter. BJP never reported its bankruptcy until its first application to extend WTPS's construction permit was filed December 7, 1991 (BMPH-921207JD) executed by Leah James. Noting Bitner's bankruptcy, and Mrs. James' efforts to acquire Bitner's interest in the partnership through negotiations with the Bankruptcy Trustee, BJP did not report that the trustee had actually taken control of Bitner's majority interest. BJP did not report or seek approval of the trustee's acquisition of Bitner's interest until it filed a Form 316 application on June 25, 1993, more than 14 months after Bitner filed for bankruptcy, and more than seven weeks after the Commission's May 4, 1993, letter directing BJP to file such an application immediately if a transfer of control had occurred (BTCH-930625GR).[6] Catamount further states that on May 11, 1993, before the trustee's involvement was reported, the trustee sold Bitner's 51% interest to the James. BJP did not file an application for prior Commission consent to this transaction until almost two months after the James acquired the controlling interest in BJP (BAPH-930702GK). This is the assignment application now pending, along with the pending extension of time application, which are the subject of the Commission's March 29, 1994, inquiry. Catamount contends that there is misrepresentation or lack of candor by BJP and the James.[7] We find that the issues raised by Catamount are now moot, since all the applications have been resolved in BJP's favor.

6. Based on the above information, we believe that the substitution of Channel 264C3 for Channel 264A at Quincy, Florida, the reallotment of Channel 264C3 from Quincy to Midway, Florida, and the modification of Station WTPS(FM)'s construction permit to specify Midway as its community of license is in the public interest. However, in examining a change of community of license proposal, we must determine whether the proposal would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. *See Modification of FM and TV Authorizations to Specify a New Community of License, ("Change of Community R&O"),* 4 FCC Rcd 4870 (1989), *recon. granted in part,* 5 FCC Rcd 7094 (1990) *("Change of Community MO&O").* In determining whether a proposed reallotment represents a preferential arrangement of allotments, we compare the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities.[8] In making this determination, we find that Midway (population 852) would receive its first local aural transmission service, which is priority three, and Quincy (population 7,444) will continue to be served by full-time Stations WWSD(AM) and WFHT(FM), falls under priority four, other public interest matters. In addition, an engineering analysis shows that the reallotment of Channel 264C3 to Midway will enable Station WTPS(FM) to serve an additional 148,368 persons within an area of 2,606 square kilometers (1,007 square miles), while the removal of Station WTPS from Quincy will create a reception service loss to 701 persons within an area of 39 square kilometers (15 square miles). The analysis also shows that both the loss area and gain area for Quincy will continue receive at least five full-time reception services, therefore we consider this to be adequate service. Quincy will also continue to receive a city grade signal, 70 dBu contour, from Station WTPS(FM). We also find that the change in community will not cause any disruption to existing service since Station WTPS has never been on the air. Finally, neither community is located within or near any Urbanized Area.

TECHNICAL SUMMARY

7. Channel 264C3 can be allotted to Midway in compliance with the Commission's minimum distance separation requirements at petitioner's specified transmitter site.[9] In accordance with Section 1.420(i) of the Commission's Rules, we will modify the construction permit for Station WTPS(FM) to specify Channel 264C3, Midway, Florida as its community of license.

8. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS OR-

[6] The application for transfer of control was granted July 23, 1993.

[7] On March 29, 1993, BJP's first application for extension of time (BMPH-921207JD) was granted by the Commission. On July 2, 1993, BJP filed an application to assign its construction permit to Leah and John James (BAPH-930702GK). Leah James was an original 49% general partner along with Monte R. Bitner, who was a 51% general partner. On April 6, 1995, the Commission granted the application for assignment, and they also granted the second application (BMPH-930929JG) for extension of time. In addition BJP's modification application (BMPH-931027IB) for a construction permit was also granted on April 6, 1995.

[8] The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight given to priorities (2) and (3)]. *See Revision of FM Assignment Policies and Procedures,* 90 FCC 2d 88 (1982).

[9] The coordinates for Channel 264C3 at Midway are North Latitude 30-32-22 and West Longitude 84-21-54.

DERED, That effective **July 24, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Midway, Florida	264C3
Quincy, Florida	268C2

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit for Station WTPS(FM), Channel 264A, Quincy, Florida, IS MODIFIED, to specify operation on Channel 264C3, Midway, Florida, in lieu of Channel 264A, Quincy, Florida, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order,* the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Bitner James Partnership, permittee of Station WTPS(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade and change of community.

11. Accordingly, IT IS FURTHER ORDERED, That the petition for rule making submitted by Clyde Scott, Jr. D/B/A EME Communications, requesting the allotment of Channel 263A to Panacea, Florida (RM- 8296), IS DISMISSED.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-41

In the Matter of

Amendment of Section 73.202(b),	RM-8443
Table of Allotments,	RM-8504
FM Broadcast Stations.	RM-8505
(Cordova and Dora, Alabama)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 1, 1995; Released: June 9, 1995

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 9 FCC Rcd 2490 (1994), issued in response to a petition for rule making filed on behalf of New Century Radio, Inc. ("petitioner"), licensee of Station WFFN(FM), Cordova, Alabama, proposing the substitution of Channel 237A for Channel 223A and modification of its authorization accordingly. Petitioner filed supporting comments and a counterproposal (RM-8504). Goodling Broadcasting Company ("GBC") also filed a counterproposal (RM-88505).[2] Haleyville Broadcasting Company, Inc. ("HBC"), licensee of Station WJBB-FM, Haleyville, Alabama, filed comments in support of the petitioner's modification proposal at Cordova. No other comments were received.

2. As stated in the *Notice*, petitioner is currently licensed to operate Station WFFN(FM) on Channel 237A as a 6 kilowatt facility at Cordova, in accordance with the provisions of Section 73.215 of the Commission's Rules.[3] Petitioner previously requested modification of its license to specify operation on Channel 254C3 or Channel 254A at Cordova. However, it was ultimately modified to Channel 223A at a restricted site in the context of a comparative proceeding in MM Docket No. 90-476. *See* 7 FCC Rcd 5489 (1992).

3. In support of its proposal petitioner maintains that the site restriction placed on Channel 223A would require it to relocate the transmitter for Station WFFN(FM) away from its core market, resulting in the loss of a second and third city grade signal to 21,604 persons, while merely adding its signal to areas already well served by broadcast facilities in the Birmingham area.[4] Petitioner alleges that the retention of Channel 237A at Cordova would enable Station WFFN(FM) to provide a second 70 dBu signal to 7,384 people in an area of 118.3 square kilometers, and a third city grade signal to 14,220 people in an area of 134.4 square kilometers.

4. In addition to its continuing support to modify Station WFFN(FM) to specify operation on Channel 237A at Cordova, petitioner requests the allotment of Channel 223A to Dora, Alabama, as that community's first local FM service, upon its deletion at Cordova. Petitioner stated its intention to apply for Channel 223A if allotted to Dora, as requested. GBC also counterproposed the allotment of Channel 223A to Dora, for which it also stated an intention to apply for authority to construct a broadcast facility at that community.

5. HBC supports the petitioner's proposal, advocating that the allotment of Channel 237A at Cordova would serve to eliminate potential interference to the operation of its Station WJBB-FM, Channel 224A at Haleyville, Alabama.[5]

6. Based upon the information presented, we will substitute Channel 237A for Channel 223A at Cordova since it will enable Station WFFN(FM) to expand its coverage area. Therefore, we will modify petitioner's license for Station WFFN(FM) to specify operation on Channel 237A, as requested. Additionally, in response to the counterproposals noted above, we will allot Channel 223A to Dora, Alabama, as that community's first local FM service. However, as indicated in the *Notice* and reiterated in footnote 6, *infra*, the issuance of a license for Channel 237A at the petitioner's requested site at Cordova, as well as for Channel 223A at Dora may be withheld until a license is issued to cover the construction permit for Station WCOC(FM), Channel 238A, at Holly Pond, Alabama.

7. As stated in the *Notice* Channel 237A can be allotted to Cordova consistent with the technical requirements of the Commission's Rules at the petitioner's specified site, utilizing coordinates 33-49-01 North Latitude and 87-11-55 West Longitude.[6] Moreover, Channel 223A can be allotted

[1] The community of Dora, Alabama, has been added to the caption.

[2] Public Notice of the counterproposals (RM-8504; RM-8505) was given on August 16, 1994 (Report No. 2026).

[3] Coordinates at the petitioner's presently licensed site at Cordova are 33-50-42 North Latitude and 87-18-26 West Longitude.

[4] In this regard, petitioner stated that Channel 223A at the restricted Cordova site would add a ninth 70 dBu signal to approximately 26,480 people, a third 70 dBu signal to approximately 566 people in an area of 14.4 square kilometers, and a second city grade signal to approximately 65 people in an area comprised of less than 1 square kilometer.

[5] HBC asserts that when Station WFFN(FM) previously operated on a first adjacent channel at Cordova, it resulted in the disruption of Station WJBB-FM's signal to numerous communities within its service area. HBC avers that Station WFFN(FM) also experienced similar interference problems from Station WJBB-FM at that time. HBC asserts that if Station WFFN(FM) is required to operate on Channel 223A, there could be mutual interference once again to listeners in the service areas of each licensee.

[6] As previously stated, the requested allotment of Channel 237A at Cordova is short-spaced to the reference coordinates for Channel 238A at Holly Pond at 34-09-03 North Latitude and 86-36-39 West Longitude, as well as to the construction permit issued to Good Earth Broadcasting, Inc. ("Good Earth") for Station WCOC(FM), Channel 238A at coordinates 34-06-16 North Latitude and 86-41-47 West Longitude at that community (File No. BPH-900122NT). Although the Holly Pond authorization to construct the facilities for Station WCOC(FM) affords contour protection to Station WFFN(FM) pursuant to the provisions of Section 73.215 of the Commission's Rules, the issu-

to Dora, Alabama, in conformity with Section 73.207(b)(1) of the Commission's Rules provided the transmitter therefor is sited at least 6.5 kilometers (4 miles) south of the community at coordinates 33-40-26 North Latitude and 87-06-55 West Longitude.[7]

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 24, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Cordova, Alabama	237A
Dora, Alabama	223A

9. The window period for filing applications for Channel 223A at Dora, Alabama, will open on **July 24, 1995**, and close on **August 24, 1995**.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of New Century Radio, Inc. for Station WFFN(FM), IS MODIFIED to specify operation on Channel 237A in lieu of Channel 223A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station WFFN(FM)'s license, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for a construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with the license issued for Station WFFN(FM), except for the channel as specified above, and a license application (FCC Form 302) is filed within 10 days of commencement of program "K "tests.

11. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the permittee of Station WCOC-FM, Holly Pond, Alabama, as follows:

Good Earth Broadcasting, Inc.

P.O. Box 968

Cullman, Alabama 35056

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 223A at Dora, Alabama, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

ance of a license for Station WFFN(FM) to operate on Channel 237A at its specified site at Cordova may be withheld until a license is issued to cover the construction permit on Channel 238A at Holly Pond. We will serve Good Earth with a copy of this *Report and Order*.

[7] The counterproponents each suggested sites for Channel 223A at Dora, Alabama, located further from the community. However, in determining compliance with the minimum distance separation requirements of the Commission's Rules, if a new proposed allotment requires a site restriction, the Commission will endeavor to assign the least restrictive theoretical site from the intended city of license. *See Fort Myers, Florida*, 3 FCC Rcd 2671 (1988). It is not until the application stage that the actual availability of a particular site is demonstrated. *See West Palm Beach, Florida*, 3 FCC Rcd 5810 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-311

In the Matter of

Amendment of Section 73.202(b), RM-8382
Table of Allotments,
FM Broadcast Stations.
(Bagdad, Arizona)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 2, 1995; Released: June 9, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 9 FCC Rcd 70 (1994) (*"Notice"*), issued in response to a petition filed by Chris Sarros ("petitioner") proposing the allotment of Channel 276C3 to Bagdad, Arizona, as that community's second local FM service. Petitioner filed supporting comments in response to the *Notice*.[1] No other comments were received.

2. In view of the petitioner's stated interest in providing a second local FM service to Bagdad, we will allot Channel 276C3 to that community, as requested.

3. As stated in the *Notice*, Channel 276C3 can be allotted to Bagdad in conformity with the minimum distance separation requirements of Section 73.207(b)(1) and (3) of the Commission's Rules, provided the transmitter is located at least 16.4 kilometers (10.2 miles) southwest of the community at coordinates 34-28-50 and 113-20-08.[2] Additionally, as Bagdad is located within 320 kilometers (199 miles) of the Mexican border, concurrence of that government to this proposal was obtained.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 24, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Bagdad, Arizona, as follows:

City	Channel No.
Bagdad, Arizona	276C3, 280A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications for Channel 276C3 at Bagdad, Arizona, will open on **July 24, 1995** and close on **August 24, 1995**.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 276C3 at Bagdad, Arizona, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] As stated in the *Notice*, petitioner's request, although signed, failed to include an affidavit verifying statements contained in the petition, as required by Section 1.52 of the Commission's Rules. Petitioner was requested to correct the deficiency in responsive comments, and has complied accordingly.

[2] As acknowledged in the *Notice*, the coordinates utilized for Channel 276C3 at Bagdad are short spaced to the allotment coordinates for Channel 275C at Sedona, Arizona, at coordinates 34-52-11 and 111-45-37. Although no theoretical site is available to negate the short spacing, the site specified herein for Channel 276C3 is consistent with the minimum distance separation requirements to the site specified in the construction permit issued to Station KQST(FM), Channel 275C, Sedona (File No. BPH-880419IC) at coordinates 34-58-07 and 111-30-28. Therefore, the issuance of a license for Channel 276C3 at Bagdad may be withheld until the license grant to Station KQST(FM) occurs at Sedona. We will serve a copy of this *Report and Order* on the licensee of Station KQST(FM).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TCI of South Dade CUID No. FL0421 (Kendall)

Benchmark Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: April 12, 1995; Released: April 18, 1995

By the Chief, Cable Services Bureau:

1. Here we consider a complaint about the price that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the community designated above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection andCompetition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. The first valid CPS complaint in the franchise area which is the subject of this Order was completed and served on Operator and received by the Commission on the dates set forth on Appendix A. Operator filed FCC Form 393 in response; Operator has also filed amended and supplemental Form 393 filings, most recently on May 17, 1994.

5. In its amended benchmark filing of May 17, 1994, Operator calculated a maximum permitted price for the CPS tier of $12.45 per month. However, Operator's actual price for the CPS tier was $13.27 per month. Thus, Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. Furthermore, upon review of Operator's submission we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. In Column G of Schedules A and C of Part III of its FCC Form 393, Operator did not correctly account for its income tax expense. By placing entries in these columns, Operator confirms that it is a tax-paying entity (i.e., a "C" corporation). However, Operator incorrectly calculated its income tax by simply applying the corporate tax rate to its return on investment. The Commission has stated that tax-paying business entities must gross-up their tax entries in Column G of Schedules A and C (i.e., calculate the tax as a percentage of return on investment plus tax).[11] By understating its tax entries in Column G, an operator reduces its effective rate of return on equipment and installations and thereby

[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS price under the new regulations. *See* para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164, 1196 n.92 (1993) ("Our provision to gross-up the return amount for income taxes applies to all tax paying business entities to the extent that they have a state or federal income tax obligation"). *See also* Cable Television Rate Regulation Questions and Answers Relating To FCC Form 393, Question and Answer No. 14 (released July 30, 1993) ("The federal tax expense should be calculated based upon a pre-tax return on investment").

could increase its CPS price. We therefore recalculate Column G of Schedules A and C (and subsequent steps) using correctly grossed-up tax entries.[12]

b. Operator's calculations for its rate-regulated package as of the initial date of regulation (Form 393, Part I, and Form 393, Part II, Worksheet 1) reflect 19 basic tier channels and 22 CPS tier channels. Our examination of the channel line-up that Operator provided with its May 17, 1994 filing, however, reveals only 18 basic tier channels and 22 CPS tier channels. Operator apparently incorrectly counted channel 39 as a regulated basic tier channel. Operator's September 1993 rate card states, however, that channel 39 is reserved for future use. Operator cannot count a channel which is not in use as a regulated channel in determining its benchmark. We have therefore changed Part II, Worksheet 1, Line 102A from 19 to 18, and we have reduced the number of regulated channels used in calculating the benchmark on Part II, Worksheet 1, Line 121 from 41 to 40. In addition, Line 202, Worksheet 2, Part II of Form 393 reflects 33 basic tier channels and 5 CPS tier channels. A review of Operator's September 1992 rate card indicates that there were actually 32 basic tier channels and 6 CPS tier channels. Accordingly, we have revised Operator's entries on Line 202.

c. Because Operator has failed to demonstrate that its price for the CPS tier was not unreasonable, we will set a maximum permitted price for this tier, incorporating the adjustments discussed above. In doing so, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheets 1 and 4, on the basis of the most accurate data currently available for the date for which Operator filed.[13] On its amended Form 393, Operator calculated the Inflation Adjustment Factor as of the end of October 1993 using data released on August 31, 1993. On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through October 1993, the base date Operator used in justifying its rates, of 1.030.

6. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rate it was charging during the period in question. Operator's showing justifies a maximum reasonable CPS tier price of $12.64 (plus franchise fee) for the period from the filing of the earliest complaint (as set forth in Appendix A) to May 14, 1994.[14]

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaint referred to in Appendix A against the cable programming service price charged by Operator in the area referenced in the caption and at Appendix A herein IS GRANTED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community referenced herein that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint (as set forth on Appendix A)[15] to May 14, 1994 which exceeded $12.64 (plus franchise fee) per month, plus interest to the date of the refund.

9. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated period, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

10. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filing with respect to the community listed herein, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted price (plus franchise fee).[16]

11. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filing required above, a price that reflects the reduction in the CPS rate determined in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
FL0421	9/27/93	9/17/93

[12] On Schedule C Operator made a typographical error for accumulated depreciation on converter box 1. This entry has been corrected from $1,933,610.41 to $1,993,610.41.

[13] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[14] This finding is based solely on the representations of Operator and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[15] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

[16] We reserve the right to make further adjustments to Operator's price for the period after May 14, 1994, upon completion of our review of Operator's Form 1200 filing.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TCI Cablevision of West Michigan, Inc.	CUID Nos. MI0125 (Wyoming), MI0256 (Grand Rapids), MI0289 (Grandville), MI0336 (East Grand Rapids), MI0388 (Georgetown), MI0390 (Gains), MI0391 (Walker), MI0393 (Grand Rapids), MI0394 (Plainsfield), MI0615 (Ada) and MI0616 (Cascade)

Benchmark Filings to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: April 12, 1995; Released: April 18, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the prices that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the communities designated above. Operator has chosen to attempt to justify its prices through benchmark showings on FCC Form 393. This Order addresses the reasonableness of Operator's prices only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. The first valid CPS complaints in each of the franchise areas which are the subject of this Order were completed and served on Operator and received by the Commission on the dates set forth on Appendix A. Operator filed FCC Form 393 in response; Operator has also filed amended and supplemental Form 393 filings, most recently on May 27, 1994.[11]

5. On March 20, 1995, Operator submitted to the Commission an agreement between Operator and the local franchising authorities in the communities addressed in this Order. The Agreement purports to settle numerous issues, including the CPS tier rate complaints at issue here. The Commission, however, is not a party to the settlement, and did not have notice or opporunity to comment on the terms of the settlement. The settlement specifically states that the franchising authorities do not have to withdraw their complaints, and to date these complaints have not been withdrawn. In addition, some of the complaints at issue were filed by subscribers who are not parties to the settlement. Since there are valid pending complaints before the Commission and since the Commission is not a party to the settlement, we must act on the pending complaints.

6. In its amended benchmark filings for CUID Nos. MI0125 and MI0256, Operator calculated a maximum permitted price for the CPS tier of $11.11 per month. For the rest of the franchise areas considered in this Order, Operator calculated a maximum permitted price for the

[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS prices under the new regulations. *See* para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, reductions in Operator's prices for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] For example, Operator filed amended FCC Forms 393 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally. Cable Operators' Rate Justification Filings, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

CPS tier of $11.26. However, Operator's actual price for the CPS tier for both groups of franchise areas was $11.80 per month. Thus, Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. Furthermore, upon review of Operator's submission we have found that it has not correctly calculated its maximum permitted prices, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. In Column G of Schedules A and C of Part III of its FCC Form 393, Operator did not correctly account for its income tax expense. By placing entries in these columns, Operator confirms that it is a tax-paying entity (i.e., a "C" corporation). However, Operator incorrectly calculated its income tax by simply applying the corporate tax rate to its return on investment. The Commission has stated that tax-paying business entities must gross-up their tax entries in Column G of Schedules A and C (i.e., calculate the tax as a percentage of return on investmentplus tax).[12] By understating its tax entries in Column G, an operator reduces its effective rate of return on equipment and installations and thereby could increase its CPS price. We therefore recalculate Column G of Schedules A and C (and subsequent steps) using correctly grossed-up tax entries.

b. Because Operator has failed to demonstrate that its price for the CPS tier was not unreasonable, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheets 1 and 4, on the basis of the most accurate data currently available for the date for which Operator filed.[13] On its amended Form 393s, Operator calculated the Inflation Adjustment Factor as of the end of October 1993 using data released on August 31, 1993. On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through October 1993, the base date Operator used in justifying its rate for the franchise areas under consideration in this Order, of 1.030.

7. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rate it was charging during the period in question. Operator's showing justifies the maximum reasonable CPS tier prices shown on Appendix B (plus franchise fee) for the period from the filing of the earliest complaint in each franchise area (as set forth in Appendix A) to May 14, 1994.[14]

8. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints referred to in Appendix A against the cable programming service prices charged by Operator in the areas referenced in the caption and at Appendix A herein, and all other complaints in these franchise areas related to the same prices, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

9. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the communities shown in Appendix B that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A)[15] to May 14, 1994 which exceeded the maximum price for each franchise area set forth in Appendix B (plus franchise fee) per month, plus interest to the date of the refund.

10. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

11. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to the communities listed herein, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price in each franchise area set forth in Appendix B (plus franchise fee).[16]

12. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filings required above, prices that reflect the reductions in the CPS rates determined in this Order.

13. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance approval of adjustments to its CPS prices in the franchise areas addressed herein for one year following the release of this Order, due to Operator's having submitted in good faith optional supplemental filings in response to our *Public Notice*.

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[12] First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164, 1196 n.92 (1993) ("Our provision to gross-up the return amount for income taxes applies to all tax paying business entities to the extent that they have a state or federal income tax obligation"). *See also* Cable Television Rate Regulation Questions and Answers Relating To FCC Form 393, Question and Answer No. 14 (released July 30, 1993) ("The federal tax expense should be calculated based upon a pre-tax return on investment").

[13] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[14] This finding is based solely on the representations of Operator and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[15] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

[16] We reserve the right to make further adjustments to Operator's prices for the period after May 14, 1994, upon completion of our review of the Operator's Form 1200 filings.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
MI0125	11/23/93	11/11/93
MI0256	10/15/93	10/6/93
MI0289	12/9/93	12/6/93
MI0336	11/1/93	10/26/93
MI0388	12/14/93	12/9/93
MI0390	10/5/93	10/1/93
MI0391	10/12/93	10/6/93
MI0393	12/29/93	12/6/93
MI0394	11/16/93	11/13/93
MI0615	12/9/93	12/6/93
MI0616	11/2/93	10/28/93

Appendix B

CUID No.	Actual Rates	Maximum Permitted Rates
MI0125	$11.80	$11.02
MI0256	$11.80	$11.02
MI0289	$11.80	$11.15
MI0336	$11.80	$11.15
MI0388	$11.80	$11.15
MI0390	$11.80	$11.15
MI0391	$11.80	$11.15
MI0393	$11.80	$11.15
MI0394	$11.80	$11.15
MI0615	$11.80	$11.15
MI0616	$11.80	$11.15

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Colony Cablevision of Florida CUID No. FL0051
Naples, Florida

Benchmark Filing To Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: April 12, 1995; Released: April 18, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we consider complaints about the prices Colony Cablevision of Florida ("Operator") was charging for its cable programming service ("CPS") tiers in Naples, Florida, CUID No. FL0051. Operator has chosen to attempt to justify its prices through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's prices only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

II. PROCEDURAL MATTERS

4. The first complete and timely complaint was served on Operator on December 3, 1993. The Commission received the complaint on December 10, 1993. In response to the complaint, Operator filed an FCC Form 393 on March 28, 1994. Operator amended its justification on June 30, 1994 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally,[11] and on January 25, 1995, in response to a Cable Services Bureau Public Notice offering operators the opportunity to make optional supplemental filings.[12]

5. Operator states that it restructured its service offerings on September 1, 1993. In addition to its basic service tier and a CPS tier called Basic Service, Operator states that it began offering eight channels on an individual, or a la carte, basis. Operator indicates that these a la carte channels could be purchased collectively as one eight-channel package (Cable Plus) or individually. A similar restructuring was addressed in our letter of inquiry ("LOI") order released on December 22, 1994, in which we resolved the regulatory status of a la carte packages offered by Operator's affiliate, Dynamic Cablevision of Florida ("Dynamic"), in Hialeah, Florida.[13] In th e LOI order, we found that the retiering constituted an evasion of rate regulation. We concluded that Dynamic's a la carte packages must be treated as rate-regulated cable programming service tiers

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[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS prices under the new regulations. *See* para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, a reduction in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] *Order* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] *Cable Operators' Rate Justification Filings*, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases*, DA 94-1556 (Dec. 29, 1994); *see also Public Notice: Cable Services Bureau Announces Extension of Time to File Under Optional Procedures Plan with Respect to Pending Pre-May 15 Benchmark Cases*, DA 95-87 (Jan. 20, 1995).

[13] *Dynamic Cablevision of Florida, Hialeah, Florida*, LOI-93-43, DA 94-1546 (Cab. Serv. Bur., released Dec. 22, 1994). In that case, Dynamic created two a la carte packages, one of which consisted of six channels that were previously offered as a separate CPS tier, and the other of which consisted of four channels that were removed from an 18-channel CPS tier.

and that the channels composing them must be counted as rate-regulated channels as of September 1, 1993, for purposes of completing the rate justification forms.

6. On January 23, 1995, Dynamic filed a Petition for Reconsideration of the Bureau's LOI decision regarding the treatment of its a la carte packages. Dynamic then filed a motion on March 9, 1995 requesting the Bureau to defer action on the complaints pending against its CPS rates in Florida until the Bureau rules on the Petition for Reconsideration.

III. DISCUSSION

7. In its amended benchmark filing, Operator calculated a maximum permitted rate for the Basic Service CPS tier of $8.81 per month (plus franchise fee).[14] Operator did not attempt to justify its monthly price of $2.40 for the Cable Plus tier. Upon review, we have determined that Operator has not correctly calculated its maximum permitted prices, and it is therefore appropriate to make the following adjustment to Operator's calculations in Form 393:

> In its calculations on Form 393, Part I, and Form 393, Part II, Worksheet 1, Operator did not count as rate-regulated or as satellite channels the eight channels in its Cable Plus package. Prior to September 1, 1993, two of these channels were offered as part of Operator's basic service tier, five channels were offered as part of a CPS tier, and one channel was not offered on this system. In several recent decisions, we have held that a la carte packages involving similar numbers and percentages of migrated channels must be treated as rate-regulated service tiers for purposes of Form 393.[15] There are no facts in the record of this proceeding that materially distinguish Operator's offering from these precedents. We therefore determine Operator's maximum permitted prices by including the eight channels of Operator's Cable Plus package as an additional CPS tier, increasing the total rate-regulated channels from 41 to 49 and the total satellite channels from 32 to 37.

8. This adjustment has the effect of decreasing the maximum permitted monthly price for the Basic Service tier to $7.59 per month (plus franchise fee). Operator's actual monthly charge for the tier was $8.64 (plus franchise fee). Therefore, the actual charge for this tier was above the maximum permitted rate and was thus unreasonable.

9. The same adjustment results in a maximum permitted rate for the Cable Plus tier of $3.57 per month (plus franchise fee). Operator's actual monthly charge for the Cable Plus tier was $2.40 (plus franchise fee). Thus, the actual charge for this tier was below the maximum permitted rate.

10. Under the Commission's rules, Operator may be liable for refunds to compensate subscribers for the overcharges described above. However, since our resolution of the issues pending in Dynamic's Petition for Reconsideration could require revisions to our analysis, we will stay the effective date of this Order in response to Dynamic's motion until we have issued our decision in that proceeding. Since interest charges on any required refunds will continue to accrue during the period of this stay, Operator's subscribers will not be adversely affected.

IV. CONCLUSIONS

11. Upon review of the record herein, we conclude that, for the period from December 10, 1993, to May 14, 1994, Operator's showing supports maximum reasonable CPS tier prices of $7.59 per month (plus franchise fee) for the Basic Service tier, and $3.57 per month (plus franchise fee) for the Cable Plus tier.[16] We further determine that we will order appropriate refunds pursuant to Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957, in order to reimburse subscribers for the amounts they paid in excess of a reasonable price for the CPS tiers.

12. We further conclude that Operator must reflect in its Form 1200 rate filing for the period after May 14, 1994 the fact that Operator's price for the Basic Service tier during the earlier period was unreasonable.[17] We reserve the right to make further adjustments to Operator's prices for the period after May 14, 1994, upon completion of our review of Operator's rate justification for that period.

13. We further conclude that Operator has submitted in good faith a timely optional supplemental filing in response to our December 29, 1994 Public Notice.[18] As provided in the Public Notice, we will relieve Operator of its obligation to obtain advance Commission approval of adjustments to its CPS prices for one year following the release of this Order.

14. We further conclude that the effective date of this Order will be stayed until the Bureau releases a decision on Dynamic's Petition for Reconsideration of the Bureau's LOI decision regarding the treatment of Dynamic's a la carte packages in Hialeah, Florida.

15. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the December 3, 1993 complaint against the cable programming service prices charged by Operator in Naples,

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[14] Operator recalculated its inflation adjustment in its January 25, 1995 amendment using Gross National Product-Price Index data released on July 29, 1994.

[15] *See, e.g., Falcon Cable TV, Southern Shores, North Carolina,* LOI 94-2, DA 94-1551 (Cab. Serv. Bur., released Dec. 22, 1994); *Vision Cable of North Carolina, Inc., Charlotte, North Carolina,* LOI 93-24, DA 94-1552 (Cab. Serv. Bur., released Dec. 22, 1994); *Vision Cable of Metrolina Inc., Cabarrus, North Carolina,* CUID Nos. NC0174 *et al.,* DA 95-294 (Cab. Serv. Bur., released Feb. 22, 1995).

[16] These findings are based solely on the representations of Operator listed in paragraph 5, *supra,* and the modifications described in paragraph 7, *supra.* Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[17] We reviewed Operator's Form 1200 rate filing and confirmed that it calculated its rates for the period after May 14, 1994 using the rate that we find in this Order to be unreasonable.

[18] *Public Notice: Cable Services Bureau Announces Optional Procedures with Respect to Pending Pre-May 15 Benchmark Cases,* DA 94-1556 (Dec. 29, 1994).

Florida, CUID No. FL0051, and all other complaints in this franchise area relating to the same prices, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

16. IT IS FURTHER ORDERED that the benchmark filing submitted by Operator with respect to Naples, Florida, CUID No. FL0051, for the period of December 10, 1993 to May 14, 1994, justifies maximum prices of $7.59 per month (plus franchise fee) for the Basic Services tier and $3.57 per month (plus franchise fee) for the Cable Plus tier.

17. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's Rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers for the period December 10, 1993[19] to May 14, 1994, that portion of the amounts paid for cable programming service that exceeded $7.59 per month (plus franchise fee) for the Basic Services tier and was thus unreasonable, plus interest to the date of the refund.

18. IT IS FURTHER ORDERED that Operator shall determine the overcharges to CPS subscribers for the stated period, and shall within 30 days of the effective date of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval thereof.

19. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(c) of the Commission's Rules, 47 C.F.R. § 76.922(b)(4)(c), that Operator shall, within 30 days of the effective date of this Order, revise its Form 1200 filing for the period beginning May 15, 1994, to include the Cable Plus package as a cable programming service tier and to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price determined in this Order (plus franchise fee).

20. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after submission of the revised Form 1200 filing required above, CPS tier prices for Naples, Florida, CUID No. FL0051, that reflect the reductions in the CPS rate determined in this Order.

21. IT IS FURTHER ORDERED, pursuant to Section 76.960 of the Commission's Rules, 47 C.F.R. § 76.960, that Operator shall not be required to obtain advance Commission approval of adjustments to its CPS prices for one year following the release of this Order.

22. IT IS FURTHER ORDERED that Dynamic's motion to defer action on the complaints against its cable programming service prices in Florida is resolved as indicated herein.

23. IT IS FURTHER ORDERED that the effective date of this Order will be stayed until the Commission releases a decision on Dynamic's Petition for Reconsideration of the Bureau's LOI decision regarding the treatment of its a la carte packages in Hialeah, Florida.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

[19] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN CABLE SYSTEMS OF CALIFORNIA, INC. d/b/a/ CONTINENTAL CABLEVISION	File No. CSR-4482-R CA0808

Petition for Special Relief

Motion to Dismiss

ORDER

Adopted: April 13, 1995; Released: April 14, 1995

By the Chief, Cable Services Bureau:

1. We have before us a Motion filed by American Cable Systems of California, Inc. d/b/a/ Continental Cablevision ("Continental") requesting dismissal of a Petition for Special Relief filed on February 7, 1995.[1] Continental filed its petition following the Cable Services Bureau's ("Bureau") decision in *In the Matter of Tel-Com, Inc. (Mingo County, WV)*, DA 95-85 (Cab. Serv. Bur., released January 20, 1995). In that decision, the Bureau stated that:

> in the case of cable programming service tiers ("CPSTs") there may be circumstances where a cable system, although not subject to effective competition as defined in the 1992 Cable Act, may be charging cable rates that are constrained by the presence of one or more other multichannel video programming distributors ("MVPD") in the franchise area. In such situations, the presence of one or more such MVPDs may ensure that the rates the operator charges subscribers for CPSTs are not "unreasonable." In such instances, the public interest may be served by relying on the market forces instead of our rate rules to ensure that the operator's rates are not "unreasonable."

In its petition, Continental seeks to show that its CPST rates in Los Angeles Franchise Area I are constrained to a reasonable level due to the presence of direct broadcast satellite (DBS) service, and that its CPST rates in the franchise area should therefore be exempted from rate regulation.

2. At the time Continental filed its motion to dismiss, only the National Association of Telecommunications Officers and Advisers (NATOA) had filed comments opposing Continental's petition. However, in response to a motion filed by DirecTV for an extension of time to respond to Continental's petition, the Bureau ordered the time for interested parties to respond to the petition extended to April 21, 1995.[2] The Bureau also ordered that reply comments would be due on May 1, 1995. In addition, the Bureau, by letter dated March 24, 1995, requested additional information from Continental regarding its claims.[3]

3. Since Continental's Petition for Special Relief was filed, the Commission has placed for public comment a proposed "Social Contract" that would govern Continental's rates for CPSTs.[4] In its motion, Continental states that, in light of the proposed Social Contract, it "no longer wishes to pursue its Petition at the present time." Accordingly, it asks that we dismiss its Petition for Special Relief without prejudice pursuant to Section 76.8(a) of the Commission's Rules.[5] Continental states that its motion has been served on counsel for both DirecTV and NATOA. We grant Continental's motion.

4. Accordingly, IT IS ORDERED that the Motion to Dismiss filed by American Cable Systems of California, Inc. d/b/a/ Continental Cablevision IS GRANTED.

5. IT IS FURTHER ORDERED that the Petition for Special Relief filed by American Cable Systems of California, Inc. d/b/a/ Continental Cablevision IS DISMISSED WITHOUT PREJUDICE pursuant to Section 76.8(a) of the Commission's Rules, as amended, 47 C.F.R. § 76.8(a).

6. This action is taken under delegated authority pursuant to Section 0.321 of the Commission's Rules, as amended, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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[1] Public Notice was issued on March 14, 1995.

[2] *In the Matter of American Cable Systems of California, Inc.*, DA 95-695 (Cab. Serv. Bureau., released March 31, 1995).

[3] *See* Letter from Mary Ellen Burns, Chief, Consumer Protection Division (March 24, 1995).

[4] *See* Public Notice, "Social Contract for Continental Cablevision, Inc. Available For Comment," FCC 95-137 (April 3, 1995).

[5] 47 C.F.R. § 76.8(a). This rules allows a petitioner to request withdrawal of its Petition for Special Relief without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the petition.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TCI Cablevision of California, Inc. CUID Nos.
CA0139 (Redlands),
CA0182 (Moreno Valley),
CA0394 (Redlands),
CA0866 (Yucaipa) and
CA0915 (March AFB)

Benchmark Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: April 14, 1995; Released: April 19, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the price that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the communities designated above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. The first valid CPS complaints in each of the franchise areas which are the subject of this Order were completed and served on Operator and received by the Commission on the dates set forth on Appendix A. Operator filed FCC Form 393 in response; Operator has also filed amended and supplemental Form 393 filings, most recently on May 31, 1994.[11]

5. In its amended benchmark filing of May 31, 1994, Operator calculated a maximum permitted price for the CPS tier of $8.48 per month. However, Operator's actual price for the CPS tier was $9.36 per month. Thus, Operator has failed to demonstrate that its price for the CPS tier was not unreasonable. Furthermore, upon review of Operator's submission, we have found that it has not correctly calculated its maximum permitted price, and it is therefore appropriate to make the following adjustments to Operator's calculations in Form 393:

a. In Column G of Schedules A and C of Part III of its FCC Form 393, Operator did not correctly account for its income tax expense. By placing entries in these columns, Operator confirms that it is a tax-paying entity (i.e., a "C" corporation). However, Operator incorrectly calculated its income tax by simply applying the corporate tax rate to its return on investment. The Commission has stated that tax-paying business entities must gross-up their tax entries in Column G of Schedules A and C (i.e., calculate the tax as a percentage of return on investment plus tax).[12] By understating its tax entries in Column G, an operator reduces its effective rate of return on equipment and installations and thereby

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS price under the new regulations. *See* para. 3, *infra*. Further, to the extent that the price as of March 31, 1994 is found to be excessive, reductions in Operator's price for the period after May 14, 1994 may be required to reflect the fact that Operator's price during the earlier period, which is used as the starting point to calculate its prices for the prospective period, was unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] For example, Operator filed an amended FCC Form 393 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally. Cable Operators' Rate Justification Filings, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] First Order on Reconsideration, Second Report and Order,

could increase its CPS price. We therefore recalculate Column G of Schedules A and C (and subsequent steps) using correctly grossed-up tax entries.[13]

b. Because Operator has failed to demonstrate that its prices for the CPS tier were not unreasonable, we will set maximum permitted prices for this tier, incorporating the adjustments discussed above. In doing so, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheets 1 and 4, on the basis of the most accurate data currently available for the date for which Operator filed.[14] On its amended Form 393, Operator calculated the Inflation Adjustment Factor as of the end of October 1993 using data released on August 31, 1993. On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through October 1993, the base date Operator used in justifying its rates, of 1.030.

6. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operator has failed to justify the rate it was charging during the period in question. Operator's showing justifies the maximum reasonable CPS tier prices shown on Appendix B (plus franchise fee) for the period from the filing of the earliest complaint in each franchise area (as set forth in Appendix A) to May 14, 1994.[15]

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints referred to in Appendix A against the cable programming service price charged by Operator in the areas referenced in the caption and at Appendix A herein, and all other complaints in these franchise areas related to the same prices, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the communities shown in Appendix B that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A)[16] to May 14, 1994 which exceeded the maximum price for each franchise area set forth in Appendix B (plus franchise fee) per month, plus interest to the date of the refund.

9. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

10. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operator shall, within 30 days of the release of this Order, revise its Form 1200 filings with respect to the communities listed herein, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum permitted price in each franchise area set forth in Appendix B (plus franchise fee).[17]

11. IT IS FURTHER ORDERED that Operator shall place into effect, within 30 days after its submission of the revised Form 1200 filings required above, prices that reflect the reductions in the CPS rates determined in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
CA0139	11/2/93	10/27/93
CA0182	11/29/93	10/11/93
CA0394	09/27/93	09/22/93
CA0866	10/15/93	10/07/93
CA0915	10/26/93	10/21/93

and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164, 1196 n.92 (1993) ("Our provision to gross-up the return amount for income taxes applies to all tax paying business entities to the extent that they have a state or federal income tax obligation"). *See also* Cable Television Rate Regulation Questions and Answers Relating To FCC Form 393, Question and Answer No. 14 (released July 30, 1993) ("The federal tax expense should be calculated based upon a pre-tax return on investment").

[13] We also note that Operator's methodology in completing Schedule A of Part III is not consistent with its related explanations or its entry on Part III, Step A, Line 1. Specifically, Operator completed Schedule A (Capital Costs of Service Installations and Maintenance of Equipment) using figures that were reduced to represent only costs related to installations and customer leased equipment, but the costs it carried into Line 1 included capital costs related to maintenance of all system equipment. In order to achieve the correct result after grossing up the tax entries, we recalculated Schedule A using the unreduced capital costs.

[14] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[15] This finding is based solely on the representations of Operator and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[16] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

[17] We reserve the right to make further adjustments to Operator's prices for the period after May 14, 1994, upon completion of our review of Operator's Form 1200 filings.

Appendix B

CUID No.	Actual Rates	Maximum Permitted Rates
CA0139	$9.36	$8.43
CA0182	$9.36	$8.43
CA0344	$9.36	$8.43
CA0866	$9.36	$8.43
CA0915	$9.36	$8.43

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US Cable of Northern Indiana — CUID No. IN0221
Hammond, Indiana

Benchmark Filing to Justify Cable Programming Service Rates

MEMORANDUM OPINION AND ORDER

Adopted: April 14, 1995; Released: April 19, 1995

By the Chief, Cable Services Bureau:

1. Here we consider a complaint about the price US Cable of Northern Indiana ("Operator") was charging for its cable programming service ("CPS") tier in the community referenced above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operator asserts that its monthly CPS price is justified by its benchmark filing because this price is less than the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint referenced herein against the cable programming service price charged by Operator in the community referenced above IS DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Service Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Telesat Cablevision, Inc. CUID No. FL0851
Orange County, Florida

Complaints Regarding
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: April 14, 1995; Released: April 19, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the price Telesat Cablevision, Inc. ("Telesat") was charging for its cable programming service ("CPS") tier in Orange County, Florida, CUID No. FL0851. On February 9, 1994, Telesat filed a Reply to Cable Programming Services Rate Complaint ("Reply") asserting that it is subject to effective competition and thus its cable programming service rate is not subject to regulation by the Commission.[1] Telesat did not file a rate justification as required by the Commission.[2]

2. In its Reply Telesat asserts that its cable system is subject to effective competition because it serves fewer than 30 per cent of the households in its franchise area, which is comprised of the unincorporated areas within Orange County.[3] Telesat makes reference to its Petition for Reconsideration ("Petition") of the certification of Orange County, Florida to regulate basic service rates, which sets out its argument in detail.[4]

3. In a Memorandum Opinion and Order released February 8, 1995, the Cable Services Bureau reviewed Telesat's Petition and found that Telesat is subject to effective competition in its Orange County franchise area.[5] Based on our finding of effective competition in our February 8, 1995, Memorandum Opinion and Order, Telesat is not subject to rate regulation in Orange County and we therefore dismiss all pending complaints regarding this franchise area.

4. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints against the cable programming service price charged by Telesat Cablevision, Inc., in Orange County, Florida, CUID No. FL0851, ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

[1] 47 C.F.R. §76.905.

[2] 47 C.F.R. §76.956; *see also* Cable Operators' Rate Justification Filings, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[3] The Commission's rules provide that only the rates of cable systems that are not subject to effective competition may be regulated. The Commission's rules further provide that a cable system is subject to effective competition if fewer than 30 per cent of the households in the system's franchise area subscribe to the system's cable service. 47 C.F.R. §76.905(a) and (b)(1).

[4] *See* Petition for Reconsideration of Telesat Cablevision, Inc., CUID No. FL0851 (filed November 16, 1993).

[5] *See* Telesat Cablevision, Inc. Petition for Reconsideration, CUID No. FL0851, Memorandum Opinion and Order, DA 95-177 (Cab. Serv. Bur., released February 8, 1995).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Multimedia Cablevision, Inc. CUID No. NC0120 (Rocky Mount)

Benchmark Filing to Justify Cable Programming Service Rates

MEMORANDUM OPINION AND ORDER

Adopted: April 14, 1995; Released: April 19, 1995

By the Chief, Cable Services Bureau:

1. Here we consider a complaint about the price Multimedia Cablevision, Inc. ("Operator") was charging for its cable programming service ("CPS") tier in the City of Rocky Mount, NC. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operator with complete and timely CPS complaint filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operator asserts that its monthly CPS price is justified by its benchmark filing because this price is equal to the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint referenced herein against the cable programming service price charged by Operator in the community referenced above IS DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Service Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Multimedia Cablevision, Inc. CUID No. KS0080, Wichita

Order Denying Jurisdiction

MEMORANDUM OPINION AND ORDER

Adopted: April 14, 1995; Released: April 19, 1995

By the Chief, Cable Services Bureau:

1. Here we consider two complaints about the price Multimedia Cablevision, Inc. ("Operator") was charging for its cable programming service ("CPS") tier in the community referenced above. We conclude that no valid complaint is pending against Operator's price in this community, and we therefore terminate our review of these filings.

2. The earliest complaint against Operator's CPS price in this community that was not returned by the Commission was filed on September 30, 1993. On April 12, 1995, Operator filed with the Commission a letter from this complainant stating his intention to withdraw his complaint.[1] Our mandate is to "protect subscribers of any cable system that is not subject to effective competition from rates that exceed the rates that would be charged if such a system were subject to effective competition."[2] While our rules forbid collusive agreements regarding forbearance from rate regulation, there is no evidence of such an agreement here. We will accordingly allow the complainant to withdraw his complaint.

3. A second complaint against Operator's CPS price was filed on October 11, 1993. On April 11, 1995, Operator moved to dismiss this complaint because complainant was not a subscriber at the time the complaint was filed.[3] Under our rules, only a "subscriber, franchising authority, or other relevant State or local government entity" may file a complaint concerning CPS prices.[4] Operator has provided sufficient information to demonstrate that the complainant discontinued his subscription on September 2, 1993. Furthermore, there is no indication that the complainant represents a franchising authority or other government entity. Therefore, we will grant Operator's motion and dismiss the complaint.

4. Under our rules, this Commission's authority to regulate CPS cable rates arises when a valid complaint against those rates is filed. Because Operator no longer faces any rate complaints, we are terminating our review of the filings made for the franchise area covered by this Order.[5]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the motion submitted by Operator to dismiss the October 11, 1993 complaint against the cable programming service price charged in Wichita, Kansas, CUID No. KS0080, IS GRANTED.

6. IT IS FURTHER ORDERED that the September 30, 1993 complaint against the cable programming service price charged by Operator in Wichita, Kansas, CUID No. KS0080, IS DISMISSED.

7. IT IS FURTHER ORDERED that permission to withdraw the September 30, 1993 complaint against the cable programming service rate of Operator in Wichita, Kansas, CUID No. KS0080, IS GRANTED, and the review of the resulting rate justification filings IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Meredith M. Jones
Chief, Cable Service Bureau

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[1] Letter from David P. Fleming, Vice President and General Counsel, Multimedia Cablevision, Inc. to Zenji Nakazawa, FCC (April 12, 1995).

[2] Conference Report on the Cable Act of 1992, at 62. *See also,* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 (1993) *(Rate Order)* at 5669.

[3] Letter from David P. Fleming, Vice President and General Counsel, Multimedia Cablevision, Inc. to Zenji Nakazawa, FCC (April 10, 1995).

[4] *See* 47 U.S.C. § 543(c)(1)(B).

[5] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

V Cable, Inc. CUID No. OH0201 (Beachwood)

Order Denying Jurisdiction

MEMORANDUM OPINION AND ORDER

Adopted: April 17, 1995; Released: April 20, 1995

By the Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. In this Order we dismiss a complaint against the price that the above-captioned operator ("Operator") was charging for its cable programming service ("CPS") tier in the community designated above on the ground that the complaint concerns a rate that is outside the jurisdiction and authority of this Commission. The Commission regulates rates for CPS only, and then only upon filing of a valid complaint.[1] Our review reveals that the complaint filed against Operator, while asserting that it challenges a CPS rate, challenges only a rate for installation of equipment used to receive the basic service tier, not for CPS. In particular, the record shows that the complainant challenged only the reconnect charge. The complaint therefore does not trigger the Commission's jurisdiction.

2. Accordingly, IT IS ORDERED, pursuant to Section 623(a)(2)(A) and (B) of the Communications Act of 1934, as amended, 47 U.S.C. § 543(a)(2)(A) and (B), that the complaint filed prior to May 15, 1994, against the cable programming service price charged by Operator in the community referenced in the caption IS DISMISSED.

3. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

JoAnn Lucanik
Chief, Financial Analysis and Compliance Division
Cable Services Bureau

[1] *See* Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460, Section 623, 47 U.S.C. § 543 (1992).

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

Meredith J. Jones
Chief, Cable Services Bureau

In the Matter of

James Cable Partners, L.P., CUID No. FL0367
D/B/A Cable Florida
Alachua County, Florida

Complaints Regarding
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: April 14, 1995; Released: April 19, 1995

By the Chief, Cable Services Bureau:

1. Here we consider a complaint about the price James Cable Partners, L.P., D/B/A Cable Florida ("James") was charging for its cable programming service ("CPS") tier in Alachua County, Florida, CUID No. FL0367. On March 28, 1994, James filed a Motion to Dismiss ("Motion") asserting that it is subject to effective competition and thus its cable programming service rate is not subject to regulation by the Commission.[1] James did not file a rate justification as required by the Commission.[2]

2. In its Motion James asserts that its cable system is subject to effective competition because it serves fewer than 30 per cent of the households in its franchise area, which is comprised of the unincorporated areas within Alachua County.[3] James makes reference to its Petition for Reconsideration ("Petition") of the certification of Alachua County, Florida to regulate basic service rates, which sets out its argument in detail.[4]

3. In a Memorandum Opinion and Order released December 23, 1994, the Cable Services Bureau reviewed James's Petition and found that James is subject to effective competition in its Alachua County franchise area.[5] Based on our finding of effective competition in our December 23, 1994, Memorandum Opinion and Order, James is not subject to rate regulation in Alachua County and we therefore dismiss the pending complaint regarding this franchise area.

4. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint against the cable programming service price charged by James Cable Partners, L.P., D/B/A Cable Florida, in Alachua County, Florida, CUID No. FL0367, IS DISMISSED.

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[1] 47 C.F.R. §76.905.

[2] 47 C.F.R. §76.956; *see also* Cable Operators' Rate Justification Filings, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[3] The Commission's rules provide that only the rates of cable systems that are not subject to effective competition may be regulated. The Commission's rules further provide that a cable system is subject to effective competition if fewer than 30 per cent of the households in the system's franchise area subscribe to the system's cable service. 47 C.F.R. §76.905(a) and (b)(1).

[4] *See* Petition for Reconsideration of James Cable Partners, L.P., D/B/A Cable Florida, CUID No. FL0367 (filed December 17, 1993).

[5] *See* James Cable Partners, L.P., D/B/A Cable Florida Petition for Reconsideration, CUID No. FL0367, Memorandum Opinion and Order, DA 94-1582 (Cab. Serv. Bur., released December 23, 1994).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Cablevision of the Midwest, Inc. CUID No. OH0746 (Westlake)

Benchmark Filing to Justify Cable Programming Service Rates

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 1995; Released: April 26, 1995

By the Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. Here we consider complaints about the price Cablevision of the Midwest, Inc. ("Operator") was charging for its cable programming service ("CPS") tier in the community referenced above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.,[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operator asserts that its monthly CPS price is justified by its benchmark filing because this price is less than the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable programming service price charged by Operator in the community referenced above ARE DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

JoAnn Lucanik
Chief, Financial Analysis and Compliance Division
Cable Services Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TCI Cablevision of Central Connecticut, Inc.	CUID Nos. CT0025 (Hartford), CT0026 (Bloomfield), CT0027 (East Hartford), CT0028 (West Hartford), CT0029 (Simsbury) and CT0030 (Windsor)
TCI Cablevision of Missouri, Inc.	CUID Nos. MO0157 (St. Charles) and MO0179 (St. Peters)

Benchmark Filings to Justify Cable Programming Service Rates

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 1995; Released: April 26, 1995

By the Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. Here we consider complaints about the prices TCI Cablevision of Central Connecticut, Inc. and TCI Cablevision of Missouri, Inc. (collectively "Operators") were charging for their cable programming service ("CPS") tier in the communities referenced above. Operators have chosen to attempt to justify their prices through benchmark showings on FCC Form 393s. This Order addresses the reasonableness of Operators' prices only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operators assert that their monthly CPS prices are justified by their benchmark filings because their prices are less than or equal to their maximum permitted charges. Upon review, we have found no apparent errors that would result in Operators' actual CPS prices exceeding their maximum permitted CPS prices.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable programming service prices charged by Operators in the communities referenced above ARE DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

JoAnn Lucanik
Chief, Financial Analysis and Compliance Division
Cable Service Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the Operators have sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which the Operators implemented their CPS prices under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the Operators. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 20, 1995

CABLE SERVICES BUREAU ANNOUNCES EXTENSION OF TIME TO FILE COMMENTS AND REPLY COMMENTS ON THE SOCIAL CONTRACT FOR CONTINENTAL CABLEVISION, INC. AND ALSO ANNOUNCES AN EXTENSION OF TIME FOR WHICH RELEVANT FRANCHISE AUTHORITIES MAY "OPT" OUT

The Cable Services Bureau is extending the filing deadlines for comments and reply comments on the proposed social contract for Continental Cablevision, Inc. outlined in FCC 95-137, April 3, 1995. This extension is made to assure that all parties will have an opportunity to review the proposed social contract and an opportunity to file comments and reply comments which will provide for the development of a complete record.

The deadline for filing comments is extended from **May 3, 1995** to **May 22, 1995**; the deadline for filing reply comments is extended from **May 18, 1995** to **June 6, 1995**. All such pleadings should reference FCC 95-137 and should be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. All comments will be available to any of the parties upon request.

The Cable Services Bureau is also extending the time by which franchise authorities that wish to opt out of the basic service tier cost of service refunds specified by the proposed social contract must provide written notice to the Commission. The deadline of May 18, 1995 for franchise authorities to opt out is extended to **June 6, 1995**. All such notifications should reference FCC 95-137 and should be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

The contract is available for reference in the Cable Services Bureau's public reference room, Room 333 at 2033 M Street, N.W., Washington, D.C. Copies are available from the Commission's copy contractor, International Transcription Services, at the Federal Communications Commission, 1919 M Street, N.W., Room 246, Washington, D.C. 20554, telephone number (202) 857-1433. The contract is also available via Internet at ftp fcc. gov.

For further information about this Public Notice contact JoAnn Lucanik of the Cable Services Bureau at (202) 416-0800.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TCI Cable of Beatrice, Inc.	CUID No. NE0008 (Beatrice)
TCI Cablevision of Gallup, Inc.	CUID No. NM0011 (Gallup)
TCI Cablevision of Oklahoma, Inc.	CUID No. OK0070 (Duncan)

Benchmark Filings to Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: April 21, 1995; Released: April 26, 1995

By the Chief, Cable Services Bureau:

1. Here we consider complaints about the prices that the above-captioned operators (each "Operator" and, collectively, "Operators") were charging for their cable programming service ("CPS") tiers in the communities designated above. Operators have chosen to attempt to justify their prices through benchmark showings on FCC Form 393. This Order addresses the reasonableness of Operators' prices only through May 14, 1994. At a later date we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. The first valid CPS complaints in each of the franchise areas which are the subject of this Order were completed and served on the respective Operators and received by the Commission on the dates set forth on Appendix A. Operators filed FCC Form 393s in response; Operators have also filed amended and supplemental Form 393 filings, most recently on May 31, 1994 for CUID No. NE0008 and August 15, 1994 for the other two franchise areas.[11]

5. For one of the communities at issue in this Order, Operator's actual CPS tier price was above the maximum permitted price that it calculated for the CPS tier and, thus, Operator failed to demonstrate that its price for the CPS tier was not unreasonable. For other communities, Operators' prices were at or below their calculated maximum permitted prices. Upon review of Operators' submissions we have found that in all cases they have not correctly calculated their maximum permitted prices, and it is therefore appropriate to make the following adjustments to Operators' calculations in their Form 393s:

a. The 1992 Cable Act requires operators to fully unbundle equipment and installation costs from programming costs.[12] The Commission's regulations implement Congress directive by requiring operators to establish an equipment basket.[13] Section 76.923(c) of the Commission's regulations specifically states that equipment basket costs shall include "the direct and indirect material and labor costs of providing, leas-

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[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent an Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which such Operator implemented its CPS prices under the new regulations. *See* para. 3, *infra*. Further, to the extent that the prices as of March 31, 1994 are found to be excessive, reductions in prices for the period after May 14, 1994 may be required to reflect the fact that the prices during the earlier period, which are used as the starting point to calculate the prices for the prospective period, were unreasonable. *See* 47 C.F.R. § 76.922(b)(4)(C).

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] For example, Operators filed amended FCC Forms 393 in response to a Cable Services Bureau Order citing common deficiencies observed in benchmark filings generally. Cable Operators' Rate Justification Filings, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[12] 47 U.S.C. § 543(b)(3).

[13] 47 C.F.R. § 76.923(b).

ing, installing, repairing, and servicing customer equipment." In its Order adopting rate regulations, the Commission amplified this regulation by stating that "[t]he basket will include an allocation of all those system joint and common costs that service installation, leasing, and equipment repair share with other system activities, excluding general system overhead."[14] When completed correctly Part III of FCC Form 393 unbundles equipment costs from programming costs.

b. Operators, however, have not properly completed Part III of their FCC Form 393s and thus have not completely unbundled equipment and installation costs from programming costs as directed by the 1992 Cable Act and the Commission's regulations. Specifically, on Schedule A of Part III Operators have not reported any maintenance facility cost for installations and service of customer leased equipment, and on Schedule B they have not reported any costs for utilities. The lack of maintenance facility and utility costs might be correct if Operators' Schedule B allocations reflected that contract or third-party labor was performing all equipment installations and repairs. The allocations that Operators make in their Schedule B Analyses, however, indicate that their own employees performed customer equipment installation and maintenance.

c. Not only are Operators' Schedule B allocations inconsistent with not having any maintenance facility costs, their allocations are also inconsistent with the argument that the repair of converters and remotes was performed off premises by a third party. Operators have included on Schedule B and their Schedule B Analyses entries for contract labor and "Converter Maintenance." These entries, however, further indicate that Operators have not fully unbundled their equipment costs from their regulated service costs. In their Part III, Step C, Line 9 explanations, Operators set forth the number of hours that they devoted to maintenance and service of remotes and converters.[15] If Operators' contract labor and converter maintenance entries are added together and the sum is divided by the number of reported hours for converter and remote maintenance, the resulting cost per hour in these communities ranges from $2.58 to $6.59. Moreover, this calculation overstates Operators' reported labor costs because it ignores that some portion of the converter maintenance cost must be for supplies. We have recognized that it is not unreasonable to assume that operators should incur a contract labor charge of $25.00 per hour for the service and maintenance of remotes and converters.[16] Not only are Operators' reported labor costs for the service and maintenance of remotes and converters substantially below this figure, they are also well below their own hourly service charge as calculated on Line 5, Step A, Part III of their Form 393s.[17] Thus, Operators' contract labor cost added to their Converter Maintenance cost cannot represent all of Operators' converter maintenance costs, and there must remain costs related to installations and service of customer leased equipment that Operators have not included on Form 393, Part III.[18]

d. Operators have not justified their Part III allocations. The Commission has repeatedly stated that where an operator does not provide adequate information to justify its rate, the Commission will set the maximum permitted rate based on the best evidence available to it.[19] Simply put, Operators cannot be permitted to delay subscriber refunds by failing to provide information that is needed to determine a maximum permitted rate. Since Operators have not justified their Part III allocations and have not calculated an acceptable figure for unbundling equipment and installation costs from programming costs, we must impute an estimated equipment cost figure. We have determined based on the best evidence available to us at this time that Operators' Part II, Worksheet 3, Line 303 entry in each community should be $0.060 of installation and customer equipment costs per subscriber per channel. We have derived this figure by analyzing a sample of other operators' FCC Form 393 filings, including both filings as to which we have already issued orders and filings that are currently under review, and we have observed that generally operators have an average unbundling figure of $0.06 per subscriber per channel.[20] We have further determined that in order to yield an unbundling figure of $0.060 per subscriber per channel, Operators must have incurred more installation and customer equipment costs than they reported, and we have therefore revised their entries on Part II, Worksheet 1, Line 104and Part II, Worksheet 3, Line 301.[21] While we recognize that this

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[14] Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 at 5815, ¶ 295 (1993) (footnote omitted). *See also* First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164 at 1190, ¶ 47 (1993).

[15] *See also* Operators' FCC Form 393s at Part III, Line 9 and Line 16.

[16] *See* Harron Communications Corp. v. Commonwealth of Massachusetts Community Antenna Television Commission, CUID Nos. MA0225, MA0247, MA0229, MA0228, MA0245, MA0224, MA0246, DA 95-160, at ¶ ¶19 -20 (Cab. Serv. Bur., released Feb. 7, 1995).

[17] Operators' calculated hourly service charge in these communities ranges from $20.10 to $28.22.

[18] If, as in other communities, Operators are charging a wire maintenance fee we would expect to see these costs reflected in Operators' rate justification filings. The absence of these costs would provide additional evidence that Operators have not fully unbundled their equipment costs from their programming costs, and our calculation of an imputed equipment cost figure is intended to correct for any distortion of Operators' permitted rates that may be caused by this error.

[19] *See* Third Order on Reconsideration, MM Docket Nos. 92-266 and 92-262, FCC 94-90, 9 FCC Rcd 4316 at 4348, ¶ 90 (1994); Cable Operators' Rate Justification Filings, DA 94-526, 9 FCC Rcd 7752 (Cab. Serv. Bur. 1994).

[20] *Cf.* United Video Cablevision, Inc., CUID Nos. MA0333 and MA0334, DA 94-1144, at ¶10 (b) n.24 (Cab. Serv. Bur. released Nov. 9, 1994) (utilizing observed industry average depreciation lives where operator without explanation departed substantially from industry norms in cost-of-service justification).

[21] This adjustment to Worksheet 1 has the effect of causing Operators in some communities to calculate their permitted

is not an ideal way to determine the correct amount of costs to unbundle and thus to derive a maximum permitted CPS rate, it is the only approach available to us where an operator does not supply sufficient information to justify its price.

e. Because Operators have failed to demonstrate that their prices for the CPS tier were not unreasonable, we will set maximum permitted prices for this tier, incorporating the adjustments discussed above. In doing so, we must also recalculate the Inflation Adjustment Factor in Form 393, Part II, Worksheets 1 and 4, on the basis of the most accurate data currently available for the date for which each Operator filed.[22] On their amended Form 393s for CUID Nos. NE0008 and NM0011, Operators calculated the Inflation Adjustment Factor as of the end of October 1993 using data released on August 31, 1993. On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 125.7 for the third quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through October 1993, the base date Operators used in justifying their rates, of 1.030.

f. On its amended Form 393 for CUID No. OK0070, Operator calculated the Inflation Adjustment Factor as of the end of December 1993 using data released on December 1, 1993. On July 29, 1994, the U.S. Department of Commerce released corrected inflation data including Gross National Product Price Index ("GNP-PI") figures of 122.3 for the third quarter of 1992 and 126.5 for the fourth quarter of 1993. Using these GNP-PI figures, we calculate an Inflation Adjustment Factor through December 1993, the base date Operator used in justifying its rate, of 1.034.

6. Upon review of the record herein, and having incorporated the adjustments discussed above, we conclude that Operators have failed to justify the rates they were charging during the period in question. Operators' showings justify the maximum reasonable CPS tier prices shown on Appendix B (plus franchise fee) for the period from the filing of the earliest complaint in each franchise area (as set forth in Appendix A) to May 14, 1994.[23]

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints referred to in Appendix A against the cable programming service prices charged by Operators in the areas referenced in the caption and at Appendix A herein, and all other complaints in these franchise areas related to the same prices, ARE GRANTED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operators shall refund to subscribers in the communities shown in Appendix B that portion of the amounts paid for cable programming service for the period from the filing of the first valid complaint in each franchise area (as set forth on Appendix A)[24] to May 14, 1994 which exceeded the maximum price for each franchise area set forth in Appendix B (plus franchise fee) per month, plus interest to the date of the refund.

9. IT IS FURTHER ORDERED that Operators shall promptly determine the overcharges to their CPS subscribers for the stated periods, and shall within 30 days of the release of this Order file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

10. IT IS FURTHER ORDERED, pursuant to Section 76.922(b)(4)(C) of the Commission's rules, 47 C.F.R. § 76.922(b)(4)(C), that Operators shall, within 30 days of the release of this Order, revise their Form 1200 filings with respect to the communities listed herein, for the period beginning May 15, 1994, to reduce the monthly charge per tier as of March 31, 1994 for Tier 2 (Line A6b) to equal the maximum price in each franchise area set forth in Appendix B (plus franchise fee).[25]

11. IT IS FURTHER ORDERED that Operators shall place into effect, within 30 days after their submission of the revised Form 1200 filings required above, prices that reflect the reductions in the CPS rates determined in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Appendix A

CUID No.	Date First Complaint Filed with FCC	Date Complaint Served
NE0008	11/8/93	11/2/93
NM0011	10/19/93	10/13/93
OK0070	2/22/94	2/18/94

rate from Form 393, Part II, Worksheet 2 rather than Worksheet 1. For CUID No. NM0011, however, Operator did not completed Worksheet 2 of Form 393. For this franchise area, therefore, we have computed Worksheet 2 by using data supplied by Operator on its Form 1200 filing.

[22] *See* 47 C.F.R. § 76.922(b)(9)(iii) (if a cable operator fails to justify its rates, rates must be adjusted in accordance with the most accurate data available at the time of analysis).

[23] This finding is based solely on the representations of Operators and the modifications described herein. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

[24] Our jurisdiction to order a refund dates from the earliest date a valid complaint is filed with the Commission. 47 C.F.R. § 76.961(b).

[25] We reserve the right to make further adjustments to Operators' prices for the period after May 14, 1994, upon completion of our review of Operators' Form 1200 filings.

Appendix B

CUID No.	Actual Rates	Maximum Permitted Rates
NE0008	$11.86	$11.29
NM0011	$10.56	$10.35
OK0070	$11.91	$10.59

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Lake County Cablevision — CUID No. FL1089, Montverde

Benchmark Filing to Support
Cable Programming Service Price

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 1995; Released: April 26, 1995

By the Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. Here we consider a complaint about the price Lake County Cablevision ("Operator") was charging for its cable programming service ("CPS") tier in Montverde, Florida. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.,[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operator asserts that its monthly CPS price is justified by its benchmark filing because this price is lower than the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaint referenced herein against the cable programming service price charged by Operator in Montverde, Florida IS DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

JoAnn Lucanik
Chief, Financial Analysis and Compliance Division
Cable Services Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Paragon Cable CUID No. MN0180 (Minneapolis)

Benchmark Filing to Justify Cable
Programming Service Rates

MEMORANDUM OPINION AND ORDER

Adopted: April 21, 1995; Released: April 26, 1995

By the Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. Here we consider complaints about the prices Paragon Cable ("Operator") was charging for its cable programming service ("CPS") tiers in the community referenced above. Operator has chosen to attempt to justify its prices through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's prices only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.,[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operator asserts that its monthly CPS prices are justified by its benchmark filing, but its actual prices are higher than the maximum permitted charges as calculated in the filing. Upon review of Operator's Form 393 filing, we have found that it has not correctly calculated its maximum permitted prices, and it is therefore appropriate to make the following adjustment to Operator's calculations on Form 393:

> Operator's calculations for its rate-regulated package as of the initial date of regulation (Form 393, Part I, and Form 393, Part II, Worksheet 1) reflect 32 basic tier channels, 20 channels in its first CPS tier, and 16 channels in its second CPS tier. However, these calculations were based on a channel line-up effective prior to September 1, 1993.[11] Based on the channel line-up which was effective on September 1, 1993, there were 23 basic tier channels, 19 channels in the first CPS tier, and 16 channels in the second CPS tier.[12] We have therefore changed Part II, Worksheet 1, Line 102A from 32 to 23, changed Part II, Line 102B from 20 to 19, and reduced the number of regulated channels used in calculating the benchmark onPart II, Worksheet 1, Line 121 from 68 to 58. This has the effect of increasing the base rate per channel and increasing the benchmark channel rate on Part II, Worksheet 1. It has the further effect of reducing the number of channels on the first CPS tier in Part I.

5. After making this adjustment, we find that Operator's actual prices did not exceed its maximum permitted CPS prices.[13]

6. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable pro-

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[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS prices under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] See letter from Steven J. Horvitz, counsel for Paragon, to Peter G. Wolfe, FCC (Mar. 24, 1995).

[12] *Id.*

[13] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

gramming service prices charged by Operator in the community referenced above ARE DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

JoAnn Lucanik
Chief, Financial Analysis and Compliance Division
Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TCI of the Heartlands, Inc.	CUID No. IA0014 (Algona)
TCI Cablevision of Oregon, Inc.	CUID Nos. OR0004 (Portland), OR0369 (Multnomah County) and OR0287 (McMinnville)
TCI Cablevision of Utah, Inc.	CUID No. UT0013 (Ogden City)

Benchmark Filings to Justify Cable Programming Service Rates

MEMORANDUM OPINION AND ORDER

Adopted: April 24, 1995; Released: April 28, 1995

By the Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. Here we consider complaints about the prices TCI Cablevision of Oregon, Inc., TCI Cablevision of Utah, Inc. and TCI of the Heartlands, Inc. (collectively "Operators") were charging for their cable programming service ("CPS") tier in the communities referenced above. Operators have chosen to attempt to justify their prices through benchmark showings on FCC Form 393s. This Order addresses the reasonableness of Operators' prices only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the prices after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operators assert that their monthly CPS prices are justified by their benchmark filings because their prices are less than or equal to their maximum permitted charges. Upon review, we have found no apparent errors that would result in Operators' actual CPS prices exceeding their maximum permitted CPS prices. [11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable programming service prices charged by Operators in the communities referenced above ARE DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

JoAnn Lucanik
Chief, Financial Analysis and Compliance
Division, Cable Service Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the Operators have sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS prices determined herein might also apply from May 15, 1994 until the date on which the Operators implemented their CPS prices under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the Operators. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Bay Cable CUID No. CA0487, Richmond, CA
CUID No. CA0006, Berkeley, CA

Benchmark Filing to Justify Cable
Programming Service Rates

MEMORANDUM OPINION AND ORDER

Adopted: April 24, 1995; Released: April 28, 1995

By the Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. Here we consider complaints about the price Lencomm, Inc. d/b/a Bay Cable ("Operator") was charging for its cable programming service ("CPS") tier in the communities referenced above. Operator has chosen to attempt to justify its price through benchmark showings on FCC Forms 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.[1]

2. Under the Cable Television Consumer Protection and Competition Act of 1992,[2] and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a complete and timely complaint. The filing of a complete and timely complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.[3] Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.[4] In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.[5]

3. The Commission's original rate regulations took effect on September 1, 1993.[6] The Commission subsequently revised its rate regulations effective May 15, 1994.[7] Operators with complete and timely CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.[8] Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.[9] Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.[10]

4. Operator asserts that its monthly CPS price is justified by its benchmark filings because this price is less than the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.[11]

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable programming service price charged by Operator in the communities referenced above ARE DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

JoAnn Lucanik
Chief, Financial Analysis and Compliance Division
Cable Services Bureau

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[1] The findings in this Order do not in any way prejudge the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent the operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*"Second Order on Reconsideration"*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which the operator implemented its CPS price under the new regulations. *See* para. 3, *infra*.

[2] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act, § 623(c), *as amended*, 47 U.S.C. § 543(c) (1993).

[3] 47 C.F.R. § 76.956.

[4] 47 C.F.R. § 76.956(b).

[5] *Id.*

[6] Order in MM Docket No. 92-266, Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

[7] 47 C.F.R. § 76.922(b).

[8] *See Second Order on Reconsideration*, 9 FCC Rcd at 4190, paras. 150-152.

[9] *Id.*

[10] 47 C.F.R. § 76.922(b)(6); *see also Second Order on Reconsideration*, 9 FCC Rcd at 4189 n.195.

[11] This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-76

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Homestead and North Miami Beach, Florida) — RM-8611

NOTICE OF PROPOSED RULE MAKING

Adopted: May 30, 1995; Released: June 9, 1995

By the Chief, Allocations Branch:

Comment Date: July 31, 1995
Reply Comment Date: August 15, 1995

1. The Commission has before it for consideration a petition for rule making filed by New Age Broadcasting, Inc., ("petitioner"), licensee of Station WXDJ(FM), Channel 239C1, Homestead, Florida, proposing the downgrade of its station from Channel 239C1 to Channel 239C2, the reallotment of Channel 239C2 from Homestead to North Miami Beach, Florida, and the modification of Station WXDJ(FM)'s license to specify North Miami Beach as its community of license.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License* ("Modification"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Petitioner states that the requested reallotment to North Miami Beach is mutually exclusive with the existing allotment of Channel 239C1 at Homestead. In support of its proposal petitioner states that the reallotment of Channel 239C2 from Homestead (population 26,866)[1] to North Miami Beach (population 35,359) would provide North Miami Beach with its first local transmission service, and would not deprive Homestead of its sole local aural transmission service.[2] Petitioner notes that Station WXDJ will not be moving into an Urbanized Area, as both Homestead and North Miami Beach, Florida are currently located within the Miami-Hialeah Urbanized Area, and there will be no impact on the number of transmission services currently available to Homestead or North Miami Beach. Petitioner also claim that the reallotment of Station WXDJ(FM) as a Class C2 facility at North Miami Beach will provide service to 1,960,358 persons, as compared to the present service to 1,760,191 persons at Homestead's currently licensed Class C1 facility. There will be a net population gain of 200,167 persons within the city grade service contour, and 34,037 persons will lose service. Petitioner further notes that it has not operated with its licensed facility since Hurricane Andrew destroyed its tower in August 1992, WXDJ has been operating from temporary facilities since the hurricane. Therefore, the people losing service have not actually received service from Station WXDJ(FM) for two years, since the temporary facility does not provide service to any of the 34,037 persons theoretically losing service. Petitioner also claims that all of the area losing service from WXDJ will receive at least two FM signals, because the entire area served by Station WXDJ is also served by Station WMCU(FM), Miami, Florida and Station WRTO(FM), Goulds, Florida.

3. In further support of its proposal petitioner states that North Miami Beach is an incorporated community with a 1990 U.S. Census population of 35,359 persons. North Miami Beach is an independent community with its own unique needs and attributes. It has its own mayor, city council, daily newspaper, and chamber of commerce. Its local government is responsible for providing many of the city's civil services, including its own local police and library services. Whereas, Homestead is interdependent with the Miami-Hialeah Urbanized Area because its relies on central Miami for most of its goods and services.

4. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. However, we believe the proposal warrants consideration since, it would not deprive Homestead of its only local aural transmission service, and its use is mutually exclusive with that of North Miami Beach. Since Homestead and North Miami Beach are both located in the Miami Hialeah Urbanized Area, we question whether North Miami Beach is deserving of a local service preference, or whether it should be credited with all of the aural services licensed to the Miami Hialeah Urbanized Area. *See RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). In addition, we acknowledge petitioner's claim that its proposal will provide service to a larger population, we must take into account the fact that existing service will be deleted from a community. With respect to evaluating proposals to change the community of license, the Commission has stated, "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallotting a channel from one community to another." *See Modifications, supra.*, 5 FCC Rcd at 7097 (1990); *see also, Report and Order (Eatonton and Sandy Springs, Georgia; Anniston and Lineville, Alabama)*, 6 FCC Rcd 6580 (1991), *App. for rev. pend.* Since we are concerned with the loss of service to the community of Homestead, we request petitioner to submit any additional information as the overall public interest benefits that would be advanced from a grant of this proposal. We also request that the petitioner provide information showing the areas and populations which will lose existing service if Station WXDJ(FM) is downgraded to

[1] Population figures taken from the 1990 U.S. Census.
[2] Homestead will continue to receive service from Station WOIR(AM), and there is a pending application for a new educational FM station on file (BPED-931213MS).

Channel 239C2 and reallotted to North Miami Beach. The study should also indicate the number of reception services which are now available within the gain and loss areas.[3]

5. We believe petitioner's proposal warrants consideration. Channel 239C2 at Homestead could be reallotted to North Miami Beach, Florida, since it would provide the community of North Miami Beach with its first local aural transmission service. A staff engineering analysis has determined that Channel 239C2 can beallotted to North Miami Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.8 kilometers (14.8 miles) south of the community.[4] In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 239C2 at North Miami Beach.

6. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

	Channel No.	
City	Present	Proposed
Homestead, Florida	239C1	--
North Miami Beach, Florida	--	239C2

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **July 31, 1995**, and reply comments on or before **August 15, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Carl R. Ramey
Todd M. Stansbury
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(Attorneys for Petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Com-

[3] Receptions services are those aural broadcast services that can be received within a given geographical area, including full-time AM and FM commercial stations. In determining reception service provided by an FM station, the area of service circumscribed by the stations's 1.0 mV/m signal contour should be considered, assuming maximum facilities for the class of station, except Class C. For Class C stations, the licensed facilities or the minimum Class C facilities, whichever is greater, should be considered. The area of reception for full-time AM stations is defined according to whether it is a Class A AM station or another class of full-time AM station. For a Class A station, called a clear channel station, the reception area is defined by a station's 0.5 mV/m groundwave contour, based on its licensed facilities. For allocation purposes, all other classes of full-time AM stations, reception service is defined as that service received within a station's *nighttime* interference-free contour. For purposes of determining the availability of aural services in the areas affected by a change of community proposal, a petitioner should include in its study reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well served. Accordingly, within a given reception area, any count of radio services beyond five is unnecessary.

[4] The coordinates for Channel 239C2 at North-Miami-Beach, Florida are North Latitude 25-42-55 and West Longitude 80-09-17.

mission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-79

In the Matter of

Amendment of Section 73.202(b), RM-8620
Table of Allotments,
FM Broadcast Stations.
(De Kalb, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 1, 1995; Released: June 9, 1995

Comment Date: July 31, 1995
Reply Comment Date: August 15, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Choctaw Broadcasting ("petitioner"), requesting the allotment of Channel 289C2 to De Kalb, Mississippi, as the community's first local FM service. Petitioner states it will apply for Channel 289C2, if allotted.[1]

2. We believe the public interest would be served by proposing the allotment of Channel 289C2 to De Kalb, Mississippi, since it could provide the community with its first local FM service. Channel 289C2 can be allotted to De Kala in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[2]

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
De Kalb, Mississippi	--	289C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **July 31, 1995**, and reply comments on or before **August 15, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Thomas L. Goldman
Choctaw Broadcasting
P.O. Box 3160
Meridian, Mississippi 39302
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[1] Although petitioner's request indicates that the original copy of his proposal was signed, petitioner failed to include an affidavit verifying that the statements contained in his petition were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in his comments.

[2] The coordinates for Channel 289C2 at De Kalb are North Latitude 32-46-03 and West Longitude 88-39-03.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-78

In the Matter of

Amendment of Section 73.202(b), RM-8619
Table of Allotments,
FM Broadcast Stations.
(Stonewall, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 2, 1995; Released: June 9, 1995

Comment Date: July 31, 1995
Reply Comment Date: August 15, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Mary C. Glass ("petitioner"), requesting the allotment of Channel 295A to Stonewall, Mississippi, as the community's first local aural transmission service. Petitioner states she will apply for Channel 295A, if allotted.[1]

2. We believe the public interest would be served by proposing the allotment of Channel 295A to Stonewall,[2] since it could provide the community with its first local FM service. Channel 295A can be allotted to Stonewall in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.1 kilometers (8.7 miles) northeast in order to avoid a short-spacing conflict with the licensed site of Station WSTZ(FM), Channel 294C, Vicksburg, Mississippi.[3]

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Stonewall, Mississippi	--	295A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **July 31, 1995**, and reply comments on or before **August 15, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Mary C. Glass
P.O. Box 848
Stonewall, Mississippi 39363
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[1] Although petitioner's request indicates that the original copy of her proposal was signed, petitioner failed to include an affidavit verifying that the statements contained in her petition were accurate to the best of her knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.40(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.42 (1990). Petitioner is requested to rectify this omission in her comments.

[2] According to the 1990 U.S. Census, Stonewall is an incorporated community with a population of 1,148 persons.

[3] The coordinates for Channel 295A at Stonewall are North Latitude 32-11-37 and West Longitude 88-39-48.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-77

In the Matter of

Amendment of Section 73.606(b), RM-8616
Table of Allotments,
TV Broadcast Stations.
(Virginia Beach, Virginia)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 2, 1995; Released: June 9, 1995

Comment Date: July 31, 1995
Reply Comment Date: August 15, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Lockwood Broadcasting, Inc. ("petitioner"), requesting the allotment of UHF Channel 21 to Virginia Beach, Virginia, as an additional television service. Petitioner states that it will apply for Channel 21, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 21 to Virginia Beach, Virginia, since an interest has been expressed in providing the community with an additional local TV service. Channel 21 can be allotted to Virginia Beach consistent with the minimum distance separation requirements of 73.610 and 73.698 of the Commission's Rules with a site restriction of 4.0 kilometers (2.5 miles) south to avoid the freeze zone surrounding Washington, D.C.[1]

3. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Virginia Beach, Virginia	43+	21+, 43+

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **July 31, 1995**, and reply comments on or before **August 15, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Mark J. Prak, Esq.
Brooks, Pierce, McLendon,
Humphrey & Leonard
P.O. Box 1800
Raleigh, North Carolina 27602
(Counsel for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 21 at Virginia Beach are North Latitude 36-48-38 and West Longitude 75-58-30. *See Order, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service,* 52 Fed. Reg. 28346, published July 29, 1986.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

Request to Decertify the State of Arkansas Telecommunications Relay Services (TRS) Program	File No. TRS-26-94

MEMORANDUM OPINION AND ORDER

Adopted: June 5, 1995; Released: June 9, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. The National Center for Law and Deafness (NCLD) has filed a petition asking the Commission[1] to decertify the State of Arkansas (Arkansas) Telecommunications Relay Services (TRS) program.[2] In particular, NCLD requests that the Commission direct the Arkansas program to make optional calling plans (OCPs) and directory assistance services available to TRS users on an equal basis with non-TRS users, and to decertify the program if it fails to comply. The petition was placed on public notice[3] and comments and replies were filed.[4] In this Memorandum Opinion and Order, we find that the Arkansas TRS program does not comply with the requirements of Title IV of the Americans with Disabilities Act of 1990 (ADA)[5] or the Commission's rules. We direct ARSI, the administrator of the Arkansas relay program, to bring the program into compliance within ninety days.[6]

II. BACKGROUND

2. On October 1, 1992, Arkansas filed an application with the Commission requesting certification of its state TRS program pursuant to Section 225(f) of the Communications Act of 1934 (the Act), 47 U.S.C. § 225(f).[7] The application stated that TRS services would be offered "at rates no greater than the rates paid for functionally equivalent voice communications services" and also that calls to the relay center would be at no cost to the person making the call. The application also indicated that a fifty percent discount off the prevailing direct dialed toll rates would apply to all TRS calls.[8] Although challenges had previously been raised before the Arkansas Public Service Commission (APSC) about whether the Arkansas program's policies on optional calling plans (OCPs) and directory assistance services met the requirements of the ADA, the APSC rejected these challenges and no mention was made of these issues in the application filed with the Commission.[9] By letter dated July 8, 1993, the Commission granted Arkansas' certification application.

3. On July 19, 1993, Ms. Beverly Esau (Esau), an Arkansas resident, filed a complaint with the APSC against her local exchange carrier, GTE Southwest, Inc. (GTESW), and the Arkansas state relay service provider, MCI, claiming that she was being double billed for certain TRS calls.[10] Although Esau does not have a hearing or speech impairment requiring the use of a text telephone, she sometimes uses the Arkansas relay service to call text telephone users in a neighboring exchange area. Esau subscribes to a GTESW OCP and pays a flat rate of $16.20 per month for unlimited station-to-station, *i.e.*, direct dialed, calls from her residence to the neighboring exchange area. When Esau makes relay calls using the same phone line to the neighboring area, however, she is billed for the relay calls by MCI. Esau has been informed that the additional charge imposed by MCI is necessary because when she makes a call to the TRS 800 number she changes carriers, and thus cannot use the OCP which applies only to GTESW customers dialing directly to their destination. Thus, Esau is paying a flat rate of $16.20 per month under the GTESW OCP, plus an additional charge to MCI for each relay call. On February 14, 1994, APSC issued an order denying

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[1] This petition is being addressed by the Common Carrier Bureau pursuant to delegated authority. *See* 47 C.F.R. §§ 0.91, 0.291.

[2] TRS is a telephone transmission service that allows people with hearing and/or speech disabilities to use the telephone. TRS facilities are equipped with special equipment and staffed by communications assistants (CAs) who relay conversations between people who use text telephones and people who use traditional telephones.

[3] *See* Public Notice, "The National Center for Law and Deafness Requests FCC to Decertify the State of Arkansas Telecommunications Relay Services (TRS) Program," released May 18, 1994.

[4] Comments were filed by the Arkansas Public Service Commission (APSC), Arkansas Relay Service, Inc. (ARSI), Arkansas Telephone Association (ATA), GTE Service Corporation (GTE), MCI Telecommunications Corporation (MCI), and jointly by Telecommunications for the Deaf, Inc. (TDI) and Self Help for Hard of Hearing People, Inc. (SHHH). Replies were filed by NCLD and American Telephone and Telegraph Company (AT&T).

[5] Pub. L. No. 101-336, § 401, 104 Stat. 327, 366-69 (adding Section 225 to the Communications Act of 1934, 47 U.S.C. § 225).

[6] ARSI is a non-profit Arkansas corporation organized by the APSC for the purpose of administering the Arkansas TRS program.

[7] *See also* 47 C.F.R. § 64.605, which contains regulations implementing that statute.

[8] Because calls placed through a relay service take longer than non-relay calls, some states provide a special discount for TRS toll calls, a practice which is encouraged by the Commission, but not required by the Commission's rules. *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4663 (1991). *See also* House Comm. on Education and Labor, Americans with Disabilities Act of 1990, H.R. Rep. No. 101-485(II), 101st Cong., 2d Sess. (1990), *reprinted in* 1990 U.S. CODE CONG. & AD. NEWS, 267, 416.

[9] These issues were discussed in an APSC order, which approved the tariff of MCI, the designated relay service provider in Arkansas. *See* Comments of MCI, Attachment A at 9-14 (Order of the APSC, Docket No. 91-051-U, dated September 25, 1992).

[10] MCI provides relay service in Arkansas pursuant to a contract with ARSI.

Esau's complaint. On April 29, 1994, Esau, through NCLD, filed a request for decertification with the Commission.

III. PLEADINGS

4. *Petition.* NCLD argues that under Title IV of the ADA, TRS users must receive "functionally equivalent" service. *See* 47 U.S.C. § 225(a)(3). According to NCLD, the functional equivalency requirement mandates that TRS users have the same opportunity to benefit from the cost savings of OCPs as non-TRS users. NCLD also argues that, under the ADA and the Commission's rules, TRS users must be charged rates no greater than those charged for functionally equivalent voice communication services. *See* 47 U.S.C. § 225(d)(1)(D); 47 C.F.R. § 64.604(c). In addition, NCLD states that the ability to make unlimited calls to a certain area for a fixed price is as much a service as the ability to make collect calls, and that the Commission's rules require that relay service providers be capable of handling any type of call normally provided. *See* 47 C.F.R. § 64.604(a)(3). Finally, NCLD argues that MCI should be directed to stop charging for TRS directory assistance calls to the extent that such calls are offered free to non-TRS users in Arkansas.[11]

5. *Comments.* APSC, ARSI, GTE, MCI, and Arkansas Telephone Association (ATA) filed comments opposing the NCLD petition.[12] These commenters argue that: (1) Esau's decertification request is an improper collateral attack on orders of the APSC and the Commission and that the Commission lacks or should not accept jurisdiction; (2) the ADA functional equivalency and rate requirements have been met; (3) it would be impossible or prohibitively expensive for the relay provider to apply OCP rates to TRS calls; and (4) unlimited free directory assistance services are already available to text telephone users in Arkansas. Telecommunications for the Deaf, Inc. (TDI) and Self Help for Hard of Hearing People, Inc. (SHHH) filed a joint comment supporting NCLD's petition. AT&T filed a reply stating that: (1) in the jurisdictions where it provides relay service, AT&T routinely makes OCPs and other discount plans available to TRS users; and (2) contrary to a statement made in an APSC order, AT&T does *not* provide free directory assistance services to text telephones users in Arkansas.[13]

IV. DISCUSSION

A. Procedural Issues and Jurisdiction

6. *Comments.* Some commenters argue that NCLD's petition is an improper collateral attack on orders of the APSC and the Commission. They argue that Esau did not appeal either the APSC order approving MCI's TRS tariff, or the APSC order denying Esau's complaint, and that Esau has thus failed to exhaust her administrative remedies under Arkansas law. They also argue that no petition for reconsideration was filed regarding the Commission letter granting the Arkansas program's application for state certification. MCI contends that while the Commission can revoke certification, Congress did not intend the Commission to use this power to override state decisions regarding a state program. Furthermore, MCI contends that if the Commission accepts jurisdiction here it would establish itself as the forum for appeals from all state regulatory decisions on TRS. GTE argues that the Commission is only authorized to revoke certification if it finds certification is "no longer warranted," and as nothing has changed since certification was granted, the Commission cannot make that finding here. Finally, APSC states that no complaint was ever referred to it concerning directory assistance services and that pursuant to 47 U.S.C. § 225(g)(2), complaints must first be referred to the state before the Commission can exercise jurisdiction.

7. *Decision.* Under the ADA, the Commission certifies a state program if it meets the Commission's regulations. *See* 47 U.S.C. § 225(f)(2). However, the Commission "may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted." *See* 47 U.S.C. § 225(f)(4). The Commission's decision to initiate decertification proceedings may be made at any time and is discretionary. *See* 47 U.S.C. § 225(f)(4). Furthermore, unlike complaint proceedings under 47 U.S.C. § 225(g), decertification proceedings are initiated by the Commission, and can be initiated even if no petition has been filed. In the present case, the Commission issued a public notice initiating decertification proceedings after it became aware of certain alleged violations involving the Arkansas state TRS program.[14] In particular, the Commission initiated this proceeding after consideration of the fact that the alleged violations involved a statutorily mandated rate requirement, and that APSC had already twice considered the OCP issue.[15] In addition, as Arkansas' certification application did not disclose its policy regarding OCPs and directory assistance calls, the Commission's previous grant of certification did not constitute approval of these policies, and does not prevent the Commission from instituting decertification proceedings once it was made aware of the existence of these policies. Based on the foregoing, we find that these decertification proceedings were properly initiated by the Commission pursuant to its authority under Section 225(f)(4).

8. With regard to the directory assistance issue, we note that the Commission's authority to initiate decertification proceedings pursuant to 47 U.S.C. § 225(f) is separate and distinct from the third party complaint procedures established by 47 U.S.C. § 225(g). In addition, even in the context of a complaint proceeding, the Commission can exercise its jurisdiction under Section 225(f) if it determines that the state program is no longer qualified for certification. *See* 47 U.S.C. § 225(g)(2)(B). Since we have determined that the Arkansas program is no longer quali-

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[11] In the APSC order approving MCI's tariff, *see* note 9 *supra*, APSC indicated that objections had been raised concerning the fact that MCI would not be providing any free directory assistance services to its TRS customers, while most local exchange carriers (LECs) in Arkansas provide their customers with two free directory assistance calls per month. The APSC rejected the objections on the ground that text telephone users in Arkansas had access to unlimited free directory assistance services through AT&T.U

[12] ATA is a non-profit corporation whose members are LECs certified by the APSC to provide service in Arkansas.

[13] *See* note 11 *supra*.

[14] *See* note 3 *supra*.

[15] APSC addressed the OCP issue once in its order approving MCI's TRS tariff, and again in the order denying Esau's complaint.

fied for state certification, we will address all of the deficiencies regarding the Arkansas program which have been brought to our attention, including its treatment of access to directory assistance.

B. ADA Requirements

9. *Comments.* Some commenters argue not only that NCLD is confusing the "functional equivalency" requirement contained in Section 225(a)(3) with the rate requirement contained in Section 225(d)(1)(D), but also that both of these requirements have been met. They contend that functionally equivalent service is being provided because persons with speech or hearing impairments are able to make and receive telephone calls through the Arkansas relay service. They argue that there is no violation of the rate requirement because, under GTESW's tariff, the OCP rates apply only to direct dialed calls carried by GTESW, and, as TRS calls are not direct dialed, they are not covered by the OCP. GTE contends that the Arkansas program actually more than meets the rate requirement because TRS users in Arkansas are given a fifty percent discount on toll calls. GTE also argues that the OCPs are optional plans, and that Esau can discontinue the plan if it does not meet her needs. GTE further contends that as both Congress and the Commission refused to mandate special discounts for TRS toll calls, *see* note 8 *supra*, they could not have intended that local calling plan discounts apply. Finally, ARSI suggests that if there is a double billing problem, it could be addressed in the rate structure of the OCPs "so that they reflected the cost savings (or value loss) of relay unavailability." According to ARSI, the discrimination here, if any, is "slight, theoretical, and not unreasonable."

10. *Decision.* We conclude that because the Arkansas state TRS program does not make OCPs available to TRS users, the program is not in compliance with the requirements of the ADA and the Commission's rules.[16] TRS is defined as a telephone transmission service that allows an individual with a hearing or speech impairment "to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of a person who does not have a hearing impairment or speech impairment." *See* 47 U.S.C. § 225(a)(3); 47 C.F.R. § 64.601(7). Furthermore, Section 225(d)(1)(D) of the Act requires that TRS users "pay rates no greater than the rates paid for functionally equivalent voice communications services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to point of termination." 47 U.S.C. § 225(d)(1)(D); *see also* 47 C.F.R. § 64.604(c)(3). Finally, Section 64.604(a)(3) of the Commission's rules states that TRS providers must be capable of handling any type of call normally provided by common carriers.

11. Regardless of whether the term "functionally equivalent" in Section 225(a)(3), standing alone, would encompass a rate requirement, the statute clearly mandates that the service required under Section 225(a)(3) must be offered at rates no greater than those charged for equivalent voice communication services. *See* 47 U.S.C. § 225(d)(1)(D); 47 C.F.R. § 64.604(c)(3). As NCLD notes, when Esau places a TRS call, she is being billed fifty percent more than non-TRS users, because she is paying fifty percent of the standard toll charge in addition to the flat rate charged by GTE. Even if Esau cancelled her OCP, she could still be subject to higher rates than non-TRS users because she would not have the option of making unlimited calls for a set rate of $16.20 per month, an option which is available to non-TRS users who subscribe to the OCP.

12. Furthermore, Arkansas cannot rely on the argument that the OCP rate applies only to direct dialed calls carried by GTESW. No TRS calls are direct dialed, and under this argument all TRS users could be subject to higher rates, a result exactly opposite that intended by the ADA and the Commission's rules. Also, all carriers are required to provide TRS service, either individually or through another entity, throughout the area which they serve. *See* 47 U.S.C. § 225(c). In the present case, MCI is merely serving as the entity though which GTESW (and other carriers) are satisfying their obligations under Section 225(c) of the Act. GTESW cannot now argue that its customers' TRS calls are really being handled by another carrier, in this case MCI, and that therefore its OCP rates do not apply.

13. The commenters' remaining arguments are also without merit. The fact that carriers are not required to provide a special TRS discount, *see* note 8 *supra*, does not mean that carriers are entitled to exclude TRS users from discounts generally available to other customers. In addition, with regard to ARSI's comments that any discrimination that may exist is not significant, the ADA expressly prohibits the type of discrimination present here. *See* 47 U.S.C. § 225(d)(1)(D). Finally, we agree with NCLD that, under Section 64.604(a)(3) of the Commission's rules, TRS providers must be capable of handling any type of call normally provided, and that this requirement includes OCP calls.

C. Cost and Practicality Issues

14. *Comments.* Some commenters argue that it would be impossible or prohibitively expensive for the TRS provider to apply OCP rates to TRS calls. APSC states that there are numerous LECs, inter exchange carriers (IXCs) and resellers in Arkansas, and hundreds of different calling plans available. GTE argues that the TRS provider would have to maintain and constantly update voluminous information on the customer accounts of every carrier, and would also have to modify its billing system. GTE suggests that the costs would be enormous and that prior to adopting such a policy the Commission should institute a rulemaking to weigh the costs and benefits involved. ATA expressed concern that carriers might be forced to provide MCI, a potential competitor, with sensitive information concerning subscribers and pricing plans. ARSI states that it also is skeptical about the practicality of applying OCP rates to TRS calls. ARSI and APSC both express concern that such a change might undermine the fifty percent TRS discount, and thwart universal service objectives by increasing costs for all ratepayers.

15. AT&T, in its reply, states that claims of undue burden and increased costs are contrary to its own experience. AT&T states that in the jurisdictions where it provides relay services, AT&T routinely provides billing data on TRS traffic, and allows the LECs to apply their own OCPs or other special pricing arrangements to TRS calls. AT&T is currently the relay provider in fifteen states as well as

[16] *See* 47 U.S.C. §§ 225(a)(3), 225(d)(1)(D); 47 C.F.R. §§ 64.601(7), 64.604(a)(3), 64.604(c)(3).

the District of Columbia, Puerto Rico and the U.S. Virgin Islands.[17] NCLD's reply also indicates that other state relay providers are making OCPs available to their users.

16. *Decision.* The record indicates that OCPs and other discount billing rates are already being made available to TRS users on a routine basis in at least eighteen other jurisdictions. In addition, the relay provider in those jurisdictions indicates that making such plans available has not been unduly costly or burdensome, and the method used appears to minimize the need to maintain voluminous records and avoids the problem of providing sensitive information to competitors. In addition, we note that the NCLD petition was placed on public notice and that no other state or state relay provider filed any objections. Under these circumstances, we conclude that the record does not support the argument that it would be impossible or prohibitively expensive to make OCPs available to TRS users.

D. Directory Assistance

17. *Comments.* APSC indicates that pursuant to the tariff, TRS users are charged $0.55 for every directory assistance call made through the Arkansas relay center. APSC states that this rate is at or below that charged by IXCs in Arkansas, but that most LECs in the state provide their customers with two free directory assistance calls per month. APSC argues, however, that Esau, who is not hearing or speech impaired, can obtain directory assistance services from her LEC at the tariffed rates, and that text telephone users in Arkansas have access to an 800 number that allows unlimited free directory assistance calls.

18. *Decision.* We note that, as with OCPs, directory assistance services must be made available to TRS users in Arkansas at rates no greater than those charged to non-TRS users. *See* 47 U.S.C. § 225(d)(1)(D); 47 C.F.R. § 64.604(c)(3). If a carrier provides two free directory assistance calls to non-TRS users, and does not make such free calls available to TRS users, the TRS users are effectively being charged higher rates for directory assistance services in violation of the requirements of Section 225(d)(1)(D) of the Act and Section 64.604(c)(3) of the Commission's rules. Thus, if a LEC provides two free directory assistance calls per month to its customers, at least two free calls must be provided regardless of whether the customer dials directory assistance directly, or places some or all of his directory assistance calls through the relay center. We also note that APSC's assertion that unlimited free directory assistance services are available to text telephone users in Arkansas is challenged by AT&T. APSC's assertion appears to rely upon an APSC order that states that AT&T is providing free directory assistance services to text telephone users.[18] In its reply comments, however, AT&T states that it is not providing free directory assistance to text telephone users in Arkansas. Accordingly, to the extent that TRS users in Arkansas are being charged more for directory assistance services in Arkansas than non-TRS users, we direct ARSI to bring the Arkansas program into compliance with the requirements of Section 225(d)(1)(D) of the Act.

V. CONCLUSION

19. For the foregoing reasons, we find that the Commission has the authority to initiate decertification proceedings against the Arkansas state TRS program pursuant to Section 225(f)(4) of the Act and Section 64.605(e) of the Commission's rules. We further find that because the Arkansas program does not make OCPs available to TRS users, the program is not in compliance with the requirements of Title IV of the ADA and the Commission's rules, and that certification is no longer warranted. We further find that, to the extent that TRS users in Arkansas are not being provided with free directory assistance calls to the same extent as non-TRS users, this practice also constitutes a violation of the ADA and the Commission's rules. We direct ARSI to correct these deficiencies, and to file a statement with the Commission describing how these deficiencies have been corrected, within ninety (90) days from the release date of this order. Failure to meet this requirement will result in further Commission action to suspend or revoke the Arkansas state TRS program's certification pursuant to Section 225(f)(4) of the Act and Section 64.605(e) of the Commission's rules.

VI. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, that Arkansas Relay Services, Inc. (ARSI) shall make optional calling plans (OCPs) available to TRS users in Arkansas within ninety (90) days from the release date of this order.

21. IT IS FURTHER ORDERED, that ARSI shall, within ninety (90) days from the release date of this order, take any steps necessary to ensure that directory assistance services for TRS users in Arkansas are provided in compliance with the requirements or Section 225(d)(1)(D) of the Act.

22. IT IS FURTHER ORDERED, that ARSI shall file a statement with the Commission, within ninety (90) days from the release date of this order, describing how the above requirements have been achieved.

23. IT IS FURTHER ORDERED, that failure to meet the above requirements will result in further Commission action to suspend or revoke the Arkansas state TRS program's certification pursuant to Section 225(f) of the Act and Section 64.605(e) of the Commission's rules.

24. IT IS FURTHER ORDERED, that the petition for decertification filed by the National Center for Law and Deafness (NCLD) is granted to the extent indicated herein, and otherwise denied.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

[17] AT&T is the relay provider in the following states: Alabama, Delaware, Georgia, Illinois, Kentucky, Maine, Montana, New Jersey, New York, Pennsylvania, Tennessee, Vermont, Virginia, Washington, and West Virginia.

[18] *See* note 11 *supra.*

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: March 16, 1995

Report No. I-8027

FCC TO ACCEPT APPLICATIONS FOR SERVICE TO NORTH KOREA

The FCC has received a letter dated February 15, 1995, from the Department of State requesting the Commission to consider applications for authority to provide telecommunications services to the Democratic People's Republic of Korea ("DPRK"). A copy of this letter is attached. Consistent with the letter, the FCC will act on applications for the provision of telecommunications services, either directly or via transiting, between the United States and DPRK that comply with the FCC's Rules and Regulations applicable to such telecommunications. We request that when applicants apply for FCC authority to provide service between the United States and the DPRK, they concurrently provide the Department of State copies of their FCC application and any relevant subsequent filings.

In addition, pursuant to the Department of State's request, we advise applicants seeking to export and/or reexport telecommunications equipment that they are required to seek authorization from the Department of Commerce, Bureau of Export Administration. Furthermore, if the telecommunications product is sourced from a third country, the Department of Treasury, Office of Foreign Assets Control should be contacted to determine if a Treasury license is required.

For further information concerning this matter, please contact Troy Tanner or Ken Schagrin at 418-1470.

FEDERAL COMMUNICATIONS COMMISSION

United States Department of State

Washington, D.C. 20520

February 15, 1995

Dear Mr. Hundt,

The Departments of State and Treasury have recently received inquiries from U.S. companies with respect to their interest in providing telecommunications services between the United States and the Democratic People's Republic of Korea ("DPRK").

For reasons of foreign policy, the Department of State requests that the Federal Communications Commission consider applications requesting authority to provide telecommunications services, either directly or via transiting arrangements, between the U.S. and the DPRK pursuant to the FCC Rules and Regulations applicable to such telecommunications. In considering such applications, we ask that the FCC review carefully the applications and associated tariffs to ensure consistency with international norms and practices, ITU Recommendations and the FCC's International Settlements Policy. The Department is prepared to assist the FCC in such an analysis.

We respectfully request that you make a public announcement with respect to this change in policy. We also request that you advise applicants that exports and reexports of telecommunications equipment will require authorization from the Department of Commerce, Bureau of Export Administration. If the telecommunications product is sourced from a third country, the Department of the Treasury, Office of Foreign Assets Control, should be contacted to determine if a Treasury license is necessary. In addition, we would appreciate it if the Federal Communications Commission could ensure that all applicants provide this office with courtesy copies of all applications and other relevant filings relating to services between the United States and the DPRK.

Mr. Reed Hundt
Chairman,
Federal Communications Commission,
1919 M Street, N.W.,
Washington, DC 20554

The Department of State appreciates the close cooperation of the FCC in handling telecommunications issues which might adversely affect U.S. foreign relations or policy objectives.

Sincerely,

Vonya B. McCann

Ambassador Vonya B. McCann
United States Coordinator
International Communication and Information Policy

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 95-264

In the Matter of)

Cost Support Material)
to be Filed With)
1995 Annual Access Tariffs)

Tariff Review Plans

Adopted: February 17, 1995; Released: February 17, 1995

By the Chief, Common Carrier Bureau:

I. Introduction

1. This document sets forth summary cost support material that local exchange carriers (LECs) should file to support their annual access charge tariff filings on or before March 31, 1995, to fulfill partially the requirements established in Sections 61.38, 61.39, and 61.41 through 61.50 of the Commissions's Rules.[1] Specific data formats are detailed in the annual tariff review plans (TRPs) and are appended to this document.[2] The TRPs display basic cost, demand, and rate information in a consistent manner for various classes of LECs, described below, thereby aiding review by the Commission and interested parties of the LECs' annual access tariff filings. The annual access TRPs have served this purpose effectively in past years.

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[1] See 47 C.F.R. §§ 61.38, 61.39, and 61.41 through 61.50. Filing the TRP does not ensure acceptance of carriers' access charge tariffs or replace total support material requirements. Carriers remain obligated to submit adequate supporting documentation of their access charges.

[2] The annual access TRP formats are developed for the specific circumstances of the calendar year in which the tariffs will become effective. The TRPs discussed in this document, which will accompany the March 31, 1995 annual access tariff filings scheduled to become effective on July 1, 1995, will be referred to as the 1995 TRPs.

II. Background

2. Based on the Bureau's experience in reviewing the LECs' interstate access tariffs, the TRP data the LECs submitted in previous filings,[3] and recent changes to the Commission's Rules,[4] we are modifying last year's TRPs. The modifications we make were developed through discussions with telecommunications industry representatives and from comments suggesting improvements and modifications to the 1994 TRPs filed by interested parties.[5]

3. We note that pending with the Commission is the Price Cap Performance Review for LECs.[6] As a consequence, if the FCC adopts any changes to the price cap rules that would affect the 1995 filings and would necessitate a revision to the TRP, we will modify the price cap TRP accordingly.

III. Price Cap Tariff Review Plan

4. In the LEC Price Cap Order,[7] the Commission adopted mandatory price cap regulation for the regional Bell Operating Companies (RBOCs)[8] and for GTE Telephone Companies. Since that Order, United Telephone Companies (United), Central Telephone

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[3] See, e.g., Commission Requirements for Cost Support Material to be Filed with 1994 Annual Access Tariffs and for Other Cost Support Material, 9 FCC Rcd 1060 (1994) (1994 TRP Order).

[4] See, e.g., Expanded Interconnection with Local Telephone Company Facilities, CC Docket 91-141, Third Report and Order, 9 FCC 2718 (1994) (Expanded Interconnection Third Report and Order).

[5] See Common Carrier Bureau Solicits Comments Regarding Modifications and Improvements to the Annual Access Tariff Review Plans, DA 94-1294, Public Notice (released November 22, 1994) (Public Notice). Comments were filed on or before December 15, 1994, by American Telephone and Telegraph Company (AT&T), Southwestern Bell Telephone Company (Southwestern), the United States Telephone Association (USTA), and U S West Communications Inc. (U S West). The comments by Southwestern and U S West were filed in support of USTA's comments.

[6] See Price Cap Performance Review for Local Exchange Carriers, 9 FCC Rcd 1687 (1994) (Price Cap Performance Review for LECs).

[7] See Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Order, 5 FCC Rcd 6786 (1990) (LEC Price Cap Order), recon., 6 FCC Rcd 2637 (1991), further recon., 6 FCC Rcd 4524 (1991), 7 FCC Rcd 5235 (1992), aff'd sub nom. National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993). See 47 C.F.R. §§ 61.41 - 61.49.

[8] The RBOCs are Ameritech Operating Companies (Ameritech), Bell Atlantic Telephone Companies (Bell Atlantic), BellSouth Corporation (BellSouth), New York Telephone Company and New England Telephone and Telegraph Company (NYNEX), Pacific Bell and Nevada Bell (Pactel), Southwestern Bell Telephone Company (Southwestern) and U S West Communications, Inc. (U S West).

Companies (Central), GTE System Telephone Companies (GTSC), Southern New England Telephone Company (SNET), Rochester Telephone Corporation (Rochester), Lincoln Telephone Company (Lincoln), and Vista Telephone Company (Vista) were required or elected to file as price cap carriers. The rules require these carriers to make their 1995 annual access tariff filings under the price cap rules. Any other carrier may elect price cap regulation as part of its 1995 annual filing. A carrier subject to price caps or electing price caps in the 1995 annual filing should file the price cap TRP outlined below. The price cap TRP is contained in Appendix A.[9]

5. The 1995 price cap TRP is a modified version of the 1994 price cap TRP. The most significant modifications include: 1) the elimination of the section in Chart EXG-1 for reporting rate-base information; 2) the addition of rows in Chart RTE-1 for LECs to display the amount of revenues from special access services and switched access services; and 3) the addition of rows in various charts to report TRP data for the newly defined Signalling Interconnection Service Category.[10] These and other modifications made to the TRP charts are discussed below.

A. Chart IND-1

6. This chart displays proposed price cap indexes (PCIs), actual price indexes (APIs), service band indexes (SBIs), subcategory indexes, and upper and lower bands on the SBIs and subcategory indexes.

7. The chart in Appendix A is a modified version of Chart IND-1 in the 1994 TRP. We have modified IND-1 to incorporate a row to display data for the Signalling Interconnection category.

8. AT&T recommends that LECs identify tariff transmittals or letters in which the historical indexes reported in Columns F, G, H, I, and J of IND-1 were implemented. AT&T notes that although some LECs provide references in workpapers, other

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[9] Price cap LECs should report all data in the price cap TRP, except rates, in full units of measure with zero decimal places. Individual rates should be reported to the number of decimal places reflected in the company's tariffs. In certain cases, the rates reported on Chart RTE-1 may be aggregate rates, i.e., an average of several rates. In those cases, rates should be displayed to six decimal places.

[10] In the Third Report and Order adopted last May in CC Docket 91-141, the Commission required most of the largest LECs to offer a service that provides system interconnectors and other users the necessary signalling information to enable then to provide tandem switching from LEC end offices. Price cap LECs were required to file these signalling information rates as a new service and to establish a separate service category under price caps within the Trunking Basket. See Expanded Interconnection Third Report and Order, para 45. See also USTA Comments.

LECs omit such information. We agree that this information would assist the Commission and interested parties in verifying the data used to calculate the LECs' indexes. It will allow reviewers to save a significant amount of time that would otherwise be spent on information searches to identify references, and thus will increase the efficiency of the review process. We are adopting AT&T's recommendation. LECs should include in their filing a workpaper titled "IND-1 References." In this workpaper, LECs should identify the transmittal number or letter filing date where the last index changes were implemented for the price cap categories and column F, G, H, I, and J of IND-1. Separate transmittal numbers or letter filing dates should be identified to the extent that the last index update differs between the categories and columns.

B. Chart CCL-1

9. This chart displays the computation of the maximum Carrier Common Line (CCL) rates allowed under price cap regulation. CCL-1 displays base period CCL and Subscriber Line Charge (SLC) demand and rates and computes the maximum CCL rates according to the formula in the Rules.[11] This level of detail is necessary in order to allow us to verify whether a carrier correctly computed the CCL price cap index.

10. AT&T recommends that LECs report certain rates at a standardized level on CCL-1 and suggests that LECs report historical rates at the level of six decimal places. Because the reported historical rates are used in calculating the maximum CCL rates, AT&T maintains that this would promote consistency among carriers in calculating the maximum CCL rates. Although we agree with AT&T that this suggestion would promote consistency, we are maintaining our standard that LECs should report rates to the number of decimal places reflected in the company's tariffs.[12] The rules do not require LECs to tariff CCL rates at the level of six decimal places. Therefore, to require that LECs report their rates to six decimal places would be unnecessarily burdensome. We therefore do not adopt AT&T's recommendation.

11. USTA recommends that CCL-1 be modified to include a row item to refer to the transmittal numbers or letter dates associated with the filing of the reported CCL rates. USTA maintains that this will assist parties in the review process. Consistent with our decision to add a new workpaper for Chart IND-1 that identifies relevant transmittals and letters, we agree that USTA's proposal would assist parties in verifying the accuracy of

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[11] See 47 C.F.R. § 61.46(d).

[12] See Footnote 9, supra. This standard also applies to rates used in the formula to calculate the maximum CCL rates.

rates. It would reduce information search cost incurred in identifying references and make the review process more efficient. We are therefore incorporating USTA's recommendation and have modified CCL-1 to include a place to refer to the transmittal numbers or letter dates associated with historical CCL rates.

C. Chart PCI-1

12. This is the same Chart PCI-1 that companies completed in the 1994 TRP. PCI-1 displays the computation of the PCI for each of the four baskets.[13] The display includes the following variables used to compute the PCI: 1) the Gross National Product Price Index (GNP-PI), the measure of inflation; 2) the productivity factor (X);[14] 3) the access expense (Y); 4) the change in "Y;" 5) exogenous cost changes (Z); 6) base period revenue (R); 7) the weighing factor used in computing the PCI (w); and 8) the growth in minutes per line (g).[15]

13. As in the 1994 annual filings, LECs may use growth in the Gross Domestic Product Price Index (GDP-PI) from the fourth quarter of 1993 to the fourth quarter of 1994 instead of GNP-PI, for the March 31, 1995 annual access tariff filings. To comply with our price cap rules, however, the March 31, 1995 filings must be revised to reflect the 75-day estimate of the GNP-PI, if it differs from the GDP-PI. This is the same procedure followed in the 1994 annual filings.[16]

D. Chart SUM-1

14. This is a summary chart displaying the revenues in baskets and categories. In particular, SUM-1 displays base period (calendar year 1994) demand multiplied by current and proposed

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[13] See 47 C.F.R. § 61.45.

[14] This has the value of 3.3 percent in the common line, traffic sensitive, and Trunking Baskets, and 3.0 percent in the Interexchange Basket; or, if the company has chosen the higher productivity factor, 1.0 percentage point higher in each of those baskets. Choice of the higher productivity factor will affect the level at which sharing or low end adjustment occurs.

[15] Companies should also provide in the workpapers accompanying the filings the detailed data used to compute the value of "g," i.e., both carrier common line minutes of use and number of subscriber lines for 1993 and 1994. The numbers for 1993 should match the data filed in Chart RTE-1 in the 1994 TRP, and the numbers for 1994 should match the data filed in Chart RTE-1 of the 1995 TRP.

[16] The Commission is considering comments that raised issues on this procedure to update to GNP-PI in the Price Cap Performance Review for LECs. Therefore, whether this update procedure will continue is currently before the Commission.

rates, and the difference between the two results, for each basket and major service category. Data on this chart are an important element of index calculations. We have modified SUM-1 from the 1994 version to include the Signalling Interconnection category.

E. Chart EXG-1

15. This chart presents supporting data for computing the exogenous cost changes used in deriving the PCI for each basket. There are columns in EXG-1 to report cost data on exogenous cost changes attributable to: 1) long term support (LTS), 2) regulatory fee changes, 3) excess deferred taxes (EDT), 4) investment tax credit (ITC) amortization, 5) revision and removal of prior-year sharing or low end adjustment, 6) sharing or low-end adjustment based on earnings in calendar year 1994, 7) Telecommunications Relay Service, and 8) "other" exogenous cost changes.

16. This chart is a modified version of the 1994 TRP. We are eliminating some columns to report exogenous cost changes, adding others, and eliminating the section in EXG-1 on rate base reporting. The modifications we are making, discussed below, reduce the number of EXG-1 chart pages from eight pages to two pages and serve to reduce the regulatory burden on filing parties and reviewers.

17. Two parties recommend the removal or addition of columns in EXG-1 pertaining to certain exogenous costs. First, USTA makes a recommendation to remove columns associated with exogenous change related to 1) the subscriber plant factor (SPF), 2) dial equipment minutes (DEM), 3) inside wire amortization (IWA), and 4) and reserve deficiency amortization (RDA).[17] USTA maintains that these columns are no longer necessary, because exogenous cost changes related to SPF, DEM, and RDA are complete, and only three study areas have yet to complete changes related to IWA. We agree with USTA that these particular columns are unnecessary and we have, accordingly, modified EXG-1. Remaining IWA exogenous costs should be identified in an "Other" column.

18. Second, AT&T recommends that the 1995 TRP include a column in EXG-1 for a new exogenous cost change.[18] On June 8, 1994, the Commission released an order adopting a new FCC regulatory fee schedule.[19] On October 7, 1994, the Commission

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[17] See USTA comments.

[18] See AT&T Comments at 1.

[19] See Implementation of Section 9 of the Communications Act, MD Docket No. 94-19, Report and Order, 9 FCC 5333 (1994).

concluded that fee changes resulting from the new schedule warranted exogenous cost treatment under price cap regulation.[20] AT&T maintains that these exogenous cost changes should be identified in a separate column in EXG-1. In general, we agree with AT&T that disaggregation of exogenous cost data is useful for review purposes. Therefore, we have modified EXG-1 to add a column titled "Fee Changes."

19. To disaggregate costs further, we are expanding the number of "other" columns in EXG-1 from one column to five columns in order for companies to report separately each type of "other" exogenous cost changes. Further, we have added a column reference section to EXG-1 in which companies should report each exogenous cost change that is reported in each "other" column. "Other" columns are used to report exogenous cost changes in addition to those changes designated under specific column headings. In the past, when companies have had more than one "other" exogenous change to report, these have been aggregrated in the Other Column. This has presented difficulties in identifying the individual exogenous changes. In that regard, we are expanding the number of columns to report "other" changes and companies should report each type of "other" exogenous cost change in a separate column.[21] We are including a total of five "other" columns in this chart because no carrier in prior annual filings has requested exogenous treatment for as many as five "other" cost changes.

20. In addition to the column changes discussed above, USTA recommends eliminating the section of EXG-1 where rate base data are displayed.[22] USTA maintains that these data add no useful information. We agree with USTA that these data are no longer useful for review purposes. In the past, such data were primarily useful in assessing exogenous cost changes that were based on the change in expense that would have occurred if the company had remained under rate-base regulation. An example is the change in expense level due to the completion of inside wire amortization. Most of these expenses are now complete in terms of price cap treatment and fully reflected in price caps. In the 1994 TRP, the vast majority of row items in the rate base section were populated with "zero". The value of continued reporting of rate base data is minimal and more than offset by the reduction in the reporting burden. Therefore, we are eliminating the rate base section of

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[20] See Price Cap Treatment of Regulatory Fees Imposed By Section 9 of the Communications Act, 9 FCC 6060 (1994), erratum (November 2, 1994).

[21] However, if the number of "other" exogenous cost changes exceeds five, the company should report four changes in separate columns and aggregate the remaining changes in the last "other" column. In the section for column references on EXG-1, the company should report the individual dollar "revenue effects" of each change aggregrated in the last "other" column.

[22] See USTA Comments.

EXG-1.

21. Consistent with the 1994 TRP Order, EXG-1 includes a column to report sharing or low-end adjustment, and columns for removal and revision of prior-year amounts.[23] The total of the removal and revision columns must reflect earnings reported in the final Form 492 for 1993. Carriers are required to base this year's sharing or low-end adjustment on earnings in calendar year 1994. Because calendar year 1994 includes portions of two tariff years, the level of sharing or low end adjustment for the second half of 1994 should be computed based on the productivity factor chosen in the 1994 annual filing and the level for the first half of 1994 should be computed based on the productivity factor in the 1993 annual filing.

22. As before, carriers should submit their Form 492 for calendar years 1993 and 1994 as part of their cost support material. In addition, carriers should provide full documentation in their workpapers showing the calculation of the sharing or low-end adjustment amount, and the method used to allocate the amount among the baskets. As in the 1994 annual filings, carriers should remove the earnings of services excluded from price cap treatment based on the assumption these services earned the same rate of return as interstate services.

23. Companies should continue to include additional data in workpapers on each exogenous cost, including the calculation of the cost change, identification of total and interstate amounts, and the method of basket allocation.

F. Chart RTE-1

24. This chart, modified from the 1994 version of RTE-1 as discussed below, displays data which can be used to compute the actual price indexes (APIs), service band indexes (SBIs), and subindexes. It displays base period (calendar year 1994) demand, current and proposed rates, and revenues computed by multiplying the demand by current and proposed rates. RTE-1 enables us to verify the accuracy of "R," the revenue variable in the PCI formula that equals base period demand multiplied by rates. Demand and rate data are reported in the aggregate under the primary rate elements of each category. This level of aggregation in RTE-1 allows rapid, consistent verification of the computation of the indexes across all companies. Detailed demand and rate data

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[23] The amount to be displayed in the 1995 TRP for the removal of sharing or low-end adjustment will not match the original amount reported in the 1994 TRP. This is because the variable "R" in the PCI formula, equaling the base period revenue, has changed. The amount of the removal should differ from the original amount by the percentage change in "R" between the 1994 and 1995 annual filings.

underlining the information in RTE-1 are reported in the rate detail charts discussed later in this section.

25. USTA recommends that RTE-1 be modified in order to aggregate two primary rate elements that were reported on a disaggregated basis in the 1994 TRP.[24] Under the USTA proposal, the primary rate elements termed "Nonrecurring Elements" and "Other Rate Elements" would be combined into one primary rate element termed "Other." USTA maintains that continued disaggregation of these elements would provide no additional useful information. Further, USTA maintains that aggregation of these elements would reduce the time and effort expended by the industry to disaggregate the data. Based on past experience and the record of comments, we agree that a disaggregation of these elements for separate review has not proved useful, and we do not anticipate that it will enhance rate review this year. Therefore, we are combining the primary rate elements termed "Nonrecurring Elements" and "Other Rate Elements" into one primary rate element termed "Other," in the 1995 TRP.

26. AT&T's recommends that we modify RTE-1 in order to add two primary rate elements under certain service categories in the Trunking Basket.[25] The new rate elements would report revenues from special and switched access services. AT&T notes that although total revenues are reported for each category, it is not possible in the TRP to divide the total into the special and switched components. AT&T maintains that the identification of special and switched revenues would assist parties in monitoring the reasonableness of proposed rates. AT&T recommends that rows to report special and switched revenues be added to RTE-1 for the following price cap categories: 1) DS1 and DS3 combined density zones; 2) DS1 and DS3 non-density zones; 3) the Voice Grade and WATS non-density zone; and 4) the total for the Trunking Basket. In addition, AT&T maintains that switched and special access revenues should be identified for each primary rate element in these categories.

27. We agree, in part, with AT&T that data on special and switched access services would assist the rate review process. Such data were included in previous versions of the TRP. As a result of the Second Transport Order,[26] which merged switched transport services with special access services to form the Trunking Basket, the categories reported in the TRP no longer distinguish special and switched revenues. Nevertheless, we

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[24] See USTA Comments.

[25] See AT&T Comments at 4.

[26] See Transport Rate Structure and Pricing, CC Docket 91-213, Second Report and Order, 9 FCC Rcd 615 (1994) (Second Transport Order), para 37.

believe such data are important for review purposes. For example, the data are necessary to calculate the cost of switched transport. In addition, the data will enhance our ability to assess the impact of FCC rule changes concerning the transport rate structure. Further, regulation of special and switched access rates differ in various respects. Consequently, separate data for each of the service categories will enable the Commission and interested parties to address the individual issues concerning each category more effectively.

28. Based on the current record, however, we are not persuaded that such data needs to be reported in all the categories recommended by AT&T. Nor are we persuaded that it is necessary to report data regarding the primary rate elements. Based on our experience and the comments submitted in response to our Public Notice, we conclude that total category data reported in the following categories is sufficient: 1) Voice Grade and WATS; and 2) High Capacity and DDS. Thus, we are adopting AT&T's recommendation to the extent described and, accordingly, we have modified the 1995 TRP to reflect these changes.

29. In the 1994 TRP Order, LECs provided a chart in addition to RTE-1 which gave complete rate element detail, i.e., demand, existing and proposed rates, along with API, SBI, and subindex computations, for every rate element. LECs provided this chart in computerized format. This level of detail helped in our review of the filings when certain companies' indexes did not exactly match the indexes computed from aggregate data. Therefore, LECs should file this chart on disk this year. We request that LECs file a 3.5-inch computer disk.

30. We leave unspecified the exact format of the rate detail charts because each price cap LEC has a different number of rate elements. For each rate element, however, LECs should display the rate element name, base period demand, current rates, and proposed rates. LECs may also include a rate identifying code. Aggregate revenue amounts for baskets, categories, and special and switched access services should also be provided in summary form at the end of the chart, to assist in verifying the agreement between this chart and the revenue amounts in RTE-1. The variation in the number of rate elements among LECs prevents us from specifying the row numbers, but each row of this chart should correspond to only one rate element. The rows should reflect the basket and service category sequence used in RTE-1.

31. In addition to the above specifications, price cap LECs should include with their cost support materials a list of all currently applicable Part 69 waivers that permit them to file rate elements different from those specified in Part 69 of the Commission's Rules. The list should include the following information: 1) a citation to the Commission or Bureau Order granting the waiver; 2) a brief description of the waiver,

including whether any new rate elements were created; and 3) the basket and, if applicable, service category, of each rate element created by the waiver. Price cap LECs should also include with their support materials a separate list of new services that are being incorporated into the APIs in this annual filing for the first time. This list should contain all services introduced as new services under the price cap rules during calendar year 1994. To assist us in verifying carrier compliance with the basket and service category structure established in the LEC Price Cap Order, carriers should also display, for each new service listed, the basket and service category to which the new service is assigned.

IV. Tariff Review Plans for Non-Price Cap Companies

A. Introduction

32. Carriers that do not elect price cap treatment for annual access year 1995 are subject to the requirements of either: 1) Section 61.38 of the Rules (baseline rate-of-return companies);[27] 2) Section 61.39 of the Rules (small telephone companies);[28] or 3) Section 61.50 of the Rules (optional incentive regulation companies).[29] Baseline rate-of-return (ROR) companies should file the ROR TRP included as Appendix B. The requirements for carriers electing to file as small telephone companies are described below as are the requirements for optional incentive regulation (OIR) companies.

B. Baseline Rate-of-Return Companies

33. Companies filing under baseline rate-of-return (ROR) regulation are subject in part to the filing requirements adopted in the Regulatory Reform Order,[30] which established a biennial filing cycle.[31] Even though baseline ROR companies are required to make an annual access tariff filing only every other year, these companies can choose to file every year. Baseline ROR companies that made an annual filing in 1994, but have decided not to submit an annual access tariff filing in 1995, should notify the Common Carrier Bureau by letter addressed to Chief, Tariff Division

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[27] See 47 C.F.R. § 61.38.

[28] See 47 C.F.R. § 61.39.

[29] See 47 C.F.R. § 61.50.

[30] See Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, 8 FCC Rcd 454 (1993) (Regulatory Reform Order), recon. pending.

[31] See Regulatory Reform Order at para. 97.

before March 31, 1995. In Appendix B, we include the ROR TRP for the companies that are making an annual access tariff filing this year.

34. The ROR TRP has been framed to place the smallest possible burden on the small, non-price cap LECs, while allowing us to evaluate adequately the rates filed by those LECs. The 1995 ROR TRP is the same as the 1994 ROR TRP, except for updates to references to the historical period and test year. The time frame of the past year cost-of-service (PYCOS) study and test year have been determined pursuant to Section 61.38 of the Rules. The Rules require one year of historical PYCOS data and one year of projected test year data.[32] Appendix B contains the charts for the ROR TRP.

C. Small Telephone Companies

35. Companies that qualify as small telephone companies and elect to file under the small telephone company rules are subject to Section 61.39 of the Rules.[33] It is not necessary for companies filing under the small company rules to submit supporting data at the time of the annual filing. The companies, however, should be prepared to submit the data promptly upon reasonable request by the Commission or interested parties.[34] The Regulatory Reform Order expanded the small telephone company filing options under Section 61.39 by allowing small telephone companies to file common line rates.

D. Optional-Incentive-Regulation Companies

36. Any non-price cap company may elect optional incentive regulation for either its traffic sensitive rates only, or for both its traffic sensitive and common line rates. In comparison to rate of return regulation, optional incentive regulation relies more heavily on historical costs, establishes broader earnings bands, and affords the LECs greater pricing flexibility.

37. We have not adopted a TRP for optional incentive regulation for the 1995 annual access tariff filing. For any carrier planning to file under optional incentive regulation for the 1995 tariff year, Tariff Division staff will provide guidance

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[32] See 47 C.F.R. § 61.38(b). Similarly, the lengths of the PYCOS period and test year for companies electing to file under Section 61.39 of the Rules, 47 C.F.R. § 61.39, are set at two year studies in most circumstances.

[33] See 47 C.F.R. § 69.3(f), which states that companies that file pursuant to Section 61.39 file in odd-numbered years.

[34] See 47 C.F.R. § 61.39(b).

regarding specific cost support for the filing.

E. Definition of Test Year and Past Year Cost of Service Period

38. The Rules require baseline ROR LECs to submit in support of their proposed rates a past year cost of service (PYCOS) study for the most recent 12-month period.[35] Those LECs are also required to submit a study projecting costs for a representative 12-month period (test year). The Rules also require that rates be targeted to earn the authorized rate of return.[36] All rates for purposes of the ROR TRP must be based upon projections using these test year data. We direct LECs filing the ROR TRP to submit PYCOS data for the period January 1, 1994, through December 31, 1994. We are adopting the period July 1, 1995 through June 30, 1996 as the test year for LECs filing the ROR TRP. As discussed below, NECA is also required to use the same PYCOS period and test year.

39. Rates under the small company rules are based on historical costs.[37] Small telephone companies may file access tariffs for their traffic sensitive and common line rates in odd numbered years, using the following optional cost support and ratemaking methods: 1) a company must compute rates, for the first access filing, based on a cost-of-service study for all elements for the most recent 12-month period with related demand for the same period; 2) for subsequent access filings, based on a cost-of-service study for all elements for the total period since the LEC's last annual access tariff filing, with related demand for the same period; 3) cost support need not be submitted with the filing; and 4) the Commission may require a company to submit such support information at a later date if needed.[38]

40. A LEC that chooses optional incentive regulation is required to compute rates for its first annual access tariff filing based on a cost-of-service study for the most recent 12-month period with related demand for the same period. For the second annual access tariff filing, the LEC is required to base revenue requirement on the costs for the total period since the carrier's

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[35] See, 47 C.F.R. § 61.38(b).

[36] See 47 C.F.R. §§ 69.2(b) and (z).

[37] Some companies that, on their own, would qualify as small telephone companies are not so classified because they are affiliated with companies that are either NECA Subset 2 companies or have study areas of greater than 50,000 access lines. Companies that would qualify small telephone companies except for such affiliation should use the July 1, 1995 through June 30, 1996 prospective test year and furnish PYCOS data for calendar year 1994.

[38] See, 47 C.F.R. § 61.39(b).

last biennial filing.

V. GUIDELINES APPLICABLE TO NECA

41. We do not specify particular summary data for NECA in this document. The level of detail in the ROR TRP should provide adequate guidance to NECA in determining the summary data for the common line pool that it should include in its filing.

42. As in the past, we do not specify particular summary data for NECA to provide for small company estimates of costs, except as noted in the paragraph below. The level of detail in the ROR TRP should provide sufficient guidance to NECA in determining the summary data that it should include as support for these calculations. The fact that we are not specifying specific summary data for NECA for its rates and payment amounts does not exempt NECA from providing support data in compliance with Section 61.38 of the Commission's Rules. If requested, Tariff Division staff will provide guidance regarding specific cost support for the annual filing.

43. As in previous annual access filings, NECA should provide TRP Chart ERN for the historical and prospective periods; settlements from its average schedule companies in Chart COS-1; and detailed cost support data concerning long term and transitional support calculations.

VI. GENERAL INSTRUCTIONS

44. The following general instructions apply to all non-price cap LECs, and, except as noted, to price cap LECs. Except for Section VI.C, infra, the following general instructions also apply to NECA. These instructions pertain to all data filed in support of access charges, including all data that are filed in the TRP. All TRP data should be filed no later than March 31, 1995, and should be accurate and complete.

A. Errata

45. Carriers are under a legal obligation to correct any erroneous data discovered in the TRP or other cost support data. Nevertheless, the submission of incorrect cost support data and the subsequent filing of errata seriously detract from the ability of the Commission and interested parties to evaluate the rates within the original notice period. Any erratum should be accompanied by

a request for special permission to permit the transmittal to take effect on the originally scheduled effective date. Further, if this request is denied, rates supported by the erratum should be refiled on statutory notice, regardless of whether these rates differ from the rates originally filed. We believe that this special permission procedure is a reasonable means of encouraging carriers to improve the quality of data submitted in the annual access filings. We also believe it facilitates the tariff review process. Exceptions to this rule will only be made upon a showing of good cause.

46. For the 1995 annual access tariff filings, we may specify an early cut-off date for errata. Carriers that discover errors after the cut-off may then be required to refile their tariffs with a later effective date. Any errata that result in a change to the company's TRP should be filed with the latest view of the TRP.

B. Certification

47. The LECs and NECA should certify that their historical and test year data are accurate, including a signed statement that the support data are true, correct, and complete to the best of the carrier's knowledge. This certification should apply to all data submitted in support of revised rates, including all data that are filed in the TRP. The text of the certification is the same as that adopted in the 1987 Waiver Order[39] and the 1988 TRP Order. The certification should be displayed as the last page in the binder containing each company's TRP.

C. Geographic Aggregation

48. Except for Charts RTE and ERN for rate of return carriers, all information in the TRP should be displayed at the same level of geographic aggregation to which the particular LEC's filed rates pertain. Charts RTE and ERN for rate of return carriers should be consistent with the current level of geographic aggregation. In addition, if the tariff rates are based on data from a number of study areas or operating companies, levels of aggregation associated with each study area (state) and operating company should be provided by carriers (except for Charts RTE, ERN, and REV). Price cap carriers need not provide TRP data below or above the level of geographic aggregation to which their proposed rates pertain.

D. Assistance from United States Telephone Association (USTA)

49. To assist the Commission and interested parties in

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[39] See Annual 1987 Access Tariff Filings, Petitions for Waivers of Filing Requirements, Mimeo No. 6945 (released Sept. 16, 1986) (1987 Waiver Order).

evaluating the national impact of revised rates, we request that the USTA Data Reporting Work Group provide us with aggregated data for all price cap LECs (except for those charts and portions of charts for which aggregation is inappropriate) in both hard copy and disk format.[40]

E. Waivers

50. If carriers find that they are unable to provide data in the TRP, they may file applications for waiver. These waiver applications should demonstrate good cause for reporting a different or lower level of detail than specified and should indicate how the carrier intends to report complete TRP data in the future. Carriers are strongly encouraged to file the complete TRP. Omission of individual data items or entries, without request for waiver, is unacceptable. If a carrier determines, however, that it will be unable to file the complete TRP, it should file an application for waiver with the Commission no later than February 24, 1995. Opposition to applications for waiver shall be filed not later than March 3, 1995. Each carrier requesting any waiver of Commission Rules should include all such requests in this single application. Carriers should not delay undertaking development of data for the 1995 TRP in anticipation that waiver requests will be granted.

F. Technical Instructions

51. Consistent with TRP filings in previous years, all companies that file a TRP should provide the data in computerized form. Details regarding this technical instruction are provided in the Attachment.

G. Compliance with the Paperwork Reduction Act

52. In compliance with the Paperwork Reduction Act, we estimate burden-hours and place the Office of Management and Budget form number and date on the formats included in the Appendices. We also note that these TRPs were developed after informal discussions with LECs and other industry representatives and after evaluation of comments filed in response to our Public Notice. We are minimizing the burden on the LECs by several means. We are deleting obsolete sections of the TRP that have not proved useful. Further, carriers need not file some historical data that have been filed in previous years. We note, especially, that we are reducing the price cap TRP by approximately seven pages by eliminating the reporting of rate base information on Chart EXG-1. We are increasing data collection in two respects regarding the price cap TRP. We believe that these changes discussed below will

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[40] Only Charts IND-1, SUM-1, and RTE-1 need be summed. The portions of chart RTE which report rates and indexes, of course, need not be summed.

make the TRP process more efficient and save time that reporting companies and reviewers would have otherwise spent verifying data. First, to assist all parties in reducing information searches, we have added a workpaper for IND-1 for companies to reference some historical data. Second, we are increasing the number of columns on Chart EXG-1 by four, to allow companies to report each type of exogenous cost change in separate columns. In the past, companies aggregated the data when the number of changes exceeded the number of columns on EXG-1. Adding columns will assist parties in identifying individual changes. Both of these changes will reduce the time that reporting companies and reviewers take to verify TRP data. Another change is that companies should disaggregrate several data items on Chart RTE-1 to provide information which will assist parties in assessing the implications of FCC policies. Overall, changes made this year lessen the burden compared to the 1994 annual access filings. Moreover, the smaller LECs continue to report significantly fewer data under rate of return regulation, thereby minimizing the reporting burden for these companies.

VII. CONCLUSION; PROCEDURAL MATTERS

53. This document will be sent directly to all carriers that will file their own annual access tariffs on March 31, 1995, and a copy will also be sent to NECA. A copy of the document and all attachments will be available for inspection at the Tariff Division, Room 518, 1919 M Street, NW, Washington, DC, 20037. The Commission will publish the text of this document in the FCC Record. Those parties wishing to obtain copies of Appendices A or B can do so through International Transcription Service, Inc. (ITS), the Commission's contractor for public records duplication. ITS is located in the Commission at Room 246, 1919 M Street, NW, Washington DC, 20037, (202) 857-3800. Further details regarding the procedures applicable to the March 31, 1995 tariff filings are provided in the Attachment.

54. Each company should submit its TRP separately from other portions of its tariff filing. Each TRP should be filed in a separate Volume 1-2 accompanying Volume 1 of the Description and Justification. Each TRP should be arranged by study area rather than by chart.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief,
Common Carrier Bureau

ATTACHMENT

PROCEDURES FOR 1995 ANNUAL ACCESS CHARGE TARIFFS
TO BE FILED ON OR BEFORE March 31, 1995

1. Local exchange carriers (LECs) are required by Part 69 of the Commission's Rules, 47, C.F.R. Part 69, to file new access charge tariffs or revisions to existing tariffs to be effective July 1, 1995, on less that 90 days' notice. Therefore, the Common Carrier Bureau anticipates receiving these filings on or before March 31, 1995. In this Attachment, we provide details on the specific procedures to be followed when submitting these filings, or revisions to the filings to be effective July 1, 1995, to the Commission.

A. GENERAL

2. Interested parties are reminded that the annual access tariff filings and the associated review and analysis are not part of a docketed proceeding. Therefore, until further notice, all correspondence and pleadings (other than tariff filings) in connection with these filings should not bear any docket number but should instead bear the designation "1995 ANNUAL ACCESS CHARGE TARIFF FILINGS." All such correspondence and pleadings should be submitted with an original and 10 copies. A copy should also be served on the Commission's Commercial Contractor, International Transcription Service, Inc. (ITS), Room 246, 1919 M Street, NW, Washington, DC.

B. TARIFF FILINGS

3. LECs submitting tariff filings should consult the attached schedule which details the number of copies to be filed and the location to which those copies should be delivered. Carriers are especially reminded that 1) the appropriate tariff filing fee must be submitted to Melon Bank, and 2) they should serve a copy on ITS. Those annual access filings submitted on March 31, 1995 should be delivered to ITS at the Commission in Room 535, 1919 M Street, NW, Washington, DC.

4. Carriers, whether filing their own individual tariffs or not, are reminded of the customer notification requirements as outlined in Section 61.58(a)(4) of the Commission's Rules, 47 C.F.R. Section 61.58 (a)(4), concerning rate increases in particular. Carriers are further reminded that the purpose of such notification is to afford any affected customer sufficient opportunity to comment on the tariff filings within the time period established for filing petitions in Section 1.773 of the Commission's Rules, 47 C.F.R. Section 1.773.

5. To facilitate identification and cataloging of the tariff filings, the LECs should:

1. Clearly label any package of revised tariff pages as such, e.g.: BELL ATLANTIC, STATE, TRANS., LTR. #XXX, DATA, REVISED TARIFF PAGES. These revised pages or any completely new tariff should not be submitted in a binder, but should be hole-punched for a 3-ring loose leaf binder.

2. Provide a list identifying all cost support volumes submitted with these revisions and associate the list with the cost volumes and the transmittal letter.

3. Clearly label all boxes containing cost support volumes as to their contents, e.g.: BELL ATLANTIC, STATE, TRANS. LTR. #XXX, DATE, VOLS. 1, 2, 3, 4, BOX 1 of 5.

4. Submit cost support material in a 3-ring binder pursuant to Public Notice dated December 13, 1986, DA 86-337, and label the volumes of cost support on the spine of the binder with the name of the carrier, the transmittal number, the subject of the filing, the volume number and the date of the filing. For example: BELL ATLANTIC, TRANS. LTR. #XXX, 1995 ACCESS CHARGE TARIFF FILING, VOL. 2-2 of 2, March 31, 1995.

5. Each carrier should submit its respective tariff review plan (TRP) and certification in a separately bound package.

6. In addition to the paper copies, all companies should submit their TRP in four copies on computer "floppy disks." Price cap carriers should submit their TRP in Lotus, Release 3 format, using the spreadsheet provided by the Bureau. The file should be named COSAAN95 where "COSA" is the company study area code. The full rate detail spreadsheet should be provided in a separate Lotus file, named COSAA95R, where "COSA" is the study area code. These files should be submitted on 3 1/2 inch high density floppy disks. Baseline rate of return carriers should follow the rules for submission of data to the Commission on magnetic media contained in the 1989 TRP. These carriers should also follow the technical documentation for the 1989 TRP, appropriately updated, for all TRP charts except COS-1(P) for which the carriers should use the documentation for ARMIS report 43-01. For filing Chart COS-1(P) on disks, carriers should follow the instructions for ARMIS report 43-01. Two copies of the disk should be filed with the Tariff Division in Room 514. One copy of the disk should also be filed with: 1) Barbara Van Hagan, FCC, Accounting and Audits Division, Room 812, 2000 L Street, NW, Washington, DC; 2) Peyton Wynns, FCC, Industry Analysis Division, Room 10, 1250 23rd Street, NW, Washington DC; and 3) ITS at the Commission in Room 535, 1919 M Street, NW, Washington, DC.

C. PETITIONS AND REPLIES

6. Petitions concerning these tariffs will be due April 25, 1995, regardless of whether the tariff revisions are submitted on or before March 31, 1995. Replies may be filed only by the publishing carriers and will be due on May 8, 1995. Petitioning parties should reference the general designation as outlined above or the specific tariff and transmittal number, and not a docket number. Petitions should be organized where possible so as to present comments in a modular form, section by section, for ease of analysis. An original and 10 copies of any petition or reply must be filed with the Commission and a copy must be served simultaneously upon the publishing carrier or petitioner. Additionally, ITS should be served with a copy in Room 246, 1919 M Street, NW, Washington, DC.

7. Members of the general public may submit one copy of their comments, without regard to form, by letter to the Secretary. These comments should specify that they concern the 1995 Annual Access Tariff Filings or a specific tariff transmittal.

D. PUBLIC INFORMATION

8. Tariffs filed with the Commission, related correspondence, petitions, and replies concerning the 1995 Annual Access Charge Tariff Filings may be examined by the public from 1:30 - 4:30 p.m., Monday through Friday, in Room 513, 1919 M Street, NW, Washington, DC.

9. Copies of tariffs, petitions, and other related filings may be obtained form the Commission's Commercial Contractor, ITS.

10. For more information, contact: John Scott, Common Carrier Bureau, Tariff Division, (202)418-1540.

1995 ANNUAL ACCESS CHARGE TARIFF FILING

Official Copies	Trans Letter	Revised Tariff Pages	Tariff Review Plan Hard Copy	Tariff Review Plan Diskette	Cost Support Vol 1 Only	Cost Support Vol 1 + Other
Secretary's Office - Room 222	1	2	-	-	-	-
Public Reference Room	1	1	-	-	-	-
ITS - Room 535 1919 M St., NW	1	1	1	1	-	1
Courtesy Copies						
Ann Stevens Room 514	1	-	-	-	1	-
Judy Nitsche Room 514	1	1	-	-	1	-
John Scott Room 514	1	-	2	2	-	2
Peyton Wynns 1250 23rd St., NW Room 10	-	-	-	1	-	-
Barbara Van Hagen Acct. & Audits 2000 L St., NW Room 812	1	1	1	1	-	1

Appendix A

Price Cap
Tariff Review Plan

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Cost Support Material)
to be Filed With)
1995 Annual Access Tariffs)

Approved by OMB
3060-0400
Expires June 30, 1996

See Below for information regarding public burden estimate

NOTICE: The Tariff Review Plans (TRPs) contain summary cost support material that certain local exchange carriers (LECs) should file to support their annual access charge tariff filings in partial fulfillment of Sections 61.38 and 61.44 through 61.49 of the Commission's Rules. The TRPs specify basic cost and demand information in a consistent format and are essential components of the Commission's access tariff review process. The information in the TRPs is used by the FCC to evaluate rates. Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

IND-1
Filing Date: 3/31/95
Filing Entity: test
Transmittal Number: 99999
1995 Annual Filing (Filename: TRP95Z10 - zero-filled)
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Price Cap Tariff Review Plan
Indices

		PROPOSED PCI	PROPOSED API	PROPOSED SBI	UPPER SBI LIMIT	LOWER SBI LIMIT	EXISTING PCI	EXISTING API	EXISTING SBI	6/30/95 PCI	6/30/95 SBI
		(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
	Common Line Basket										
100	Total Common Line	0.0000	N/A	N/A	N/A	N/A	0.0000	N/A	N/A	0.0000	N/A
	Traffic Sensitive Basket										
110	Local Switching	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
120	Information	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
130	Database Access	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
140	800 DB VertSvcs Sub-Cat	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
150	Billing Name and Address	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
160	Total Switched Access	0.0000	0.0000	N/A	N/A	N/A	0.0000	0.0000	N/A	0.0000	N/A
	Trunking Basket										
200	Interconnection Charge	N/A	N/A	0.0000	0.0000	N/A	N/A	N/A	0.0000	N/A	0.0000
210	Tandem Switched Transport	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
220	Density Zone 1	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
230	Density Zone 2	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
240	Density Zone 3	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
250	VoiceGrade/WATS,Metallic,Telegrap	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
260	Density Zone 1	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
270	Density Zone 2	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
280	Density Zone 3	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
290	Audio & Video	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
300	High Caps & DDS	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
310	DS-1 SUB-CAT	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
320	Spec Density Zone 1	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
330	Spec Density Zone 2	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
340	Spec Density Zone 3	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
350	DTT Density Zone 1	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
360	DTT Density Zone 2	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
370	DTT Density Zone 3	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
380	Comb Density Zone 1	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
390	Comb Density Zone 2	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
400	Comb Density Zone 3	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
410	DS-3 SUB-CAT	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
420	Spec Density Zone 1	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
430	Spec Density Zone 2	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
440	Spec Density Zone 3	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
450	DTT Density Zone 1	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
460	DTT Density Zone 2	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
470	DTT Density Zone 3	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
480	Comb Density Zone 1	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
490	Comb Density Zone 2	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
500	Comb Density Zone 3	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
510	Wideband	N/A	N/A	0.0000	0.0000	0.0000	N/A	N/A	0.0000	N/A	0.0000
515	Signalling Interconnection	N/A	N/A	0.0000	0.0000	N/A	N/A	N/A	0.0000	N/A	0.0000
520	Total Trunking	0.0000	0.0000	N/A	N/A	N/A	0.0000	0.0000	N/A	0.0000	N/A
	Interexchange Basket										
600	Total Interexchange	0.0000	0.0000	N/A	N/A	N/A	0.0000	0.0000	N/A	0.0000	N/A

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	Interexchange Basket									
600	Total Interexchange	0.0000	0.0000	N/A	N/A	N/A	0.0000	0.0000	N/A	0.0000	N/A

CCL-1
Filing Date: 3/31/95
Filing Entity: test
Transmittal Number: 99999
1995 Annual Filing (Filename: TRP95Z10 - zero-filed)

Price Cap Tariff Review Plan
CALCULATION OF CARRIER COMMON LINE RATE CAP

		Trans.# or LetterFiling Date ForCappedCCL	DATA (A)
	Step 1:		
100	Terminating CCL Premium MOU		0
110	Terminating CCL Non-Premium MOU		0
120	Chargeable Terminating CCL MOU		0
130	Originating CCL Premium MOU		0
140	Originating CCL Non-Premium MOU		0
150	Chargeable Originating CCL MOU		0
160	Terminating CCL Prem Capped Rates at last PCI Update	0	0.000000
170	Originating CCL Premium Capped Rates at last PCI Update	0	0.000000
180	Multiline Business EUCL Lines		0
190	Res & Single Line Business EUCL Lines		0
200	Lifeline EUCL Lines		0
210	Special Access Surcharge Lines		0
220	Multiline Business EUCL Rates at last PCI Update		0.000000
230	Res & Single Line Business EUCL Rates at last PCI Update		0.000000
240	Lifeline EUCL Rates at last PCI Update		0.000000
250	Special Access Surcharge Rates at last PCI Update		0.000000
255	Other CCL Revenue		0
260	CL Revenue at capped (t-1) rates		0
	Step 2:		
270	CL Revenue at capped (t-1) rates		0
280	CCL MOU for Base Year		0
290	CL Rev/MOU (t-1)		0.000000
	Step 3:		
300	CL PCI (t)		0.0000
310	CL PCI (t-1)		0.0000
320	1 + % Change CL PCI		0.000000
330	CL Rev/MOU (t)		0.000000
	Step 4:		
340	Base Demand * Proposed SLCs + Other Common Line Proposed Revenue		0
350	CCL MOU for Base Year		0
360	1+g/2		0.000000
370	SLC Rev/MOU (t)		0.000000
380	CCL Rev/MOU (t)		0.000000
	Step 5:		
390	CCL MOU for Base Year		0
400	CCL Rev at CCL Rev/MOU (t)		0
410	Chargeable Originating MOU		0
420	Originating CCL Rev (Rate = $0.01)		0
430	Residual CCL Revenue		0
440	Chargeable Terminating MOU		0
450	Hypothetical Premium Terminating Rate Cap #1 (Prem Orig = $0.01)		0.000000
460	Total Chargeable MOU		0
470	Hypothetical Premium Terminating Rate Cap #2 (If OrigRate = TermRate)		0.000000
480	Premium Terminating Rate Cap		0.000000
490	Proposed Premium Terminating Rate		0.000000

NOTES (1) Display indexes on rows 300 and 310 as percents to four decimal places. (e.g., display 100% as 100.0000).
(2) Display factors in rows 320 and 360 to six decimal places (e.g., display 1 as 1.000000).
(3) Display revenues, lines, and minutes as whole numbers.

PCI-1
Filing Date: 3/31/95
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1995 Annual Filing (Filename: TRP95Z10 - zero-filled)

		COMMON LINE BASKET	TRAFFIC SENSITIVE BASKET	TRUNKING BASKET	INTER-EXCHANGE BASKET
		(A)	(B)	(C)	(D)
100	GNP-PI	0.0000	0.0000	0.0000	0.0000
110	Productivity Factor (X)	0.0000	0.0000	0.0000	0.0000
120	GNP-PI - X	0.0000	0.0000	0.0000	0.0000
130	Y(t-1)	N/A	N/A	N/A	0
140	Delta Y	N/A	N/A	N/A	0
150	Delta Z	0	0	0	0
160	R(t-1)	0	0	0	0
170	Delta Y/R	N/A	N/A	N/A	0.0000
180	Delta Z/R	0.0000	0.0000	0.0000	0.0000
190	W	0.0000	0.0000	0.0000	0.0000
200	W*(GNP-PI - X)	N/A	0.0000	0.0000	0.0000
210	Growth in Min./Line (g)	0.0000	N/A	N/A	N/A
220	W*[GNP-PI - X - (g/2)] / [1 + (g/2)]	0.0000	N/A	N/A	N/A
230	Existing PCI	0.0000	0.0000	0.0000	0.0000
240	Proposed PCI	0.0000	0.0000	0.0000	0.0000

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NOTES: (1) Display indexes and factors as percent to four decimal places (e.g., display 100% as 100.0000)
(2) Display revenues as whole numbers.
(3) Rows 130 and 160 are computed by multiplying base period quantities by the corresponding rates at the last time the PCI was updated.

SUM-1

SUM-1
Filing Date: 3/31/95
Filing Entity: test
Transmittal Number: 99999
1995 Annual Filing (Filename: TRP95Z10 - zero-filed)

Price Cap Tariff Review Plan
Price Out Summary

		BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE	BASE PERIOD DEMAND x CURRENT RATES	BASE PERIOD DEMAND x PROPOSED RATES	BASE PER DMD x CURR RATES minus BASE PER DMD x RATES AT LAST PCI UPDATE	BASE PER DMD x PROP RATES minus BASE PER DMD x CURRENT RATES
		(A)	(B)	(C)	(D) = (B) - (A)	(E) = (C) - (B)
	Common Line Basket					
100	End User Common Line	0	0	0	0	0
110	Carrier Common Line	0	0	0	0	0
120	Total Common Line	0	0	0	0	0
	Traffic Sensitive Basket					
130	Local Switching	0	0	0	0	0
150	Information	0	0	0	0	0
160	Database Access	0	0	0	0	0
165	Billing Name and Address	0	0	0	0	0
170	Total Switched Access	0	0	0	0	0
	Trunking Basket					
171	Interconnection Charge	0	0	0	0	0
175	Tandem Switched Transport	0	0	0	0	0
180	Voice Grade,WATS,Metallic & Telegraph	0	0	0	0	0
190	Audio & Video	0	0	0	0	0
200	High Caps & DDS	0	0	0	0	0
210	Wideband	0	0	0	0	0
215	Signalling Interconnection	0	0	0	0	0
220	Total Trunking	0	0	0	0	0
	Interexchange Basket					
230	Total Interexchange	0	0	0	0	0

Note: Display whole numbers.

EXG-1
Filing Date: 3/31/95
Filing Entity: test
Transmittal Number: 99999
1995 Annual Filing (Filename: TRP95Z12 - zero-filled)

Price Cap Tariff Review Plan
Exogenous Cost Changes

	LTS	REGULA-TORY FEES	EXCESS DEFERRED TAXES	ITC AMORTIZ.	REMOVAL OF SHARING / LOW END ADJUSTMENT	TRUEUP PRIOR SHARING / LOW END ADJUSTMENT	CURRENT SHARING / LOW END ADJUSTMENT	TELECOMM. RELAY SERVICES
	(C)	(D)	(F)	(G)	(H)	(I)	(J)	(K)
COMMON LINE Revenue Effect								
100 Depreciation Expense	N/A	N/A	0	0	N/A	N/A	N/A	N/A
110 Expense less Depreciation	N/A	N/A	0	0	N/A	N/A	N/A	N/A
120 Taxes less F.I.T.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
130 Net Return	N/A	N/A	0	0	N/A	N/A	N/A	N/A
140 F.I.T.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
150 Uncollectible Rev. & Other Adj.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
160 Revenue Effects	0	0	0	0	0	0	0	0
TRAFFIC SENSITIVE Revenue Effect								
300 Depreciation Expense	N/A	N/A	0	0	N/A	N/A	N/A	N/A
310 Expense less Depreciation	N/A	N/A	0	0	N/A	N/A	N/A	N/A
320 Taxes less F.I.T.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
330 Net Return	N/A	N/A	0	0	N/A	N/A	N/A	N/A
340 F.I.T.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
350 Uncollectible Rev. & Other Adj.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
360 Revenue Effects	N/A	0	0	0	0	0	0	0
TRUNKING Revenue Effect								
500 Depreciation Expense	N/A	N/A	0	0	N/A	N/A	N/A	N/A
510 Expense less Depreciation	N/A	N/A	0	0	N/A	N/A	N/A	N/A
520 Taxes less F.I.T.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
530 Net Return	N/A	N/A	0	0	N/A	N/A	N/A	N/A
540 F.I.T.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
550 Uncollectible Rev. & Other Adj.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
560 Revenue Effects	N/A	0	0	0	0	0	0	0
INTEREXCHANGE Revenue Effect								
700 Depreciation Expense	N/A	N/A	0	0	N/A	N/A	N/A	N/A
710 Expense less Depreciation	N/A	N/A	0	0	N/A	N/A	N/A	N/A
720 Taxes less F.I.T.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
730 Net Return	N/A	N/A	0	0	N/A	N/A	N/A	N/A
740 F.I.T.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
750 Uncollectible Rev. & Other Adj.	N/A	N/A	0	0	N/A	N/A	N/A	N/A
760 Revenue Effects	N/A	0	0	0	0	0	0	0

NOTE: (1) Total may not equal sum of changes due to interactive effects.
(2) Display whole numbers.
(3) Most column labelling letters match 1994 labels. 1994's Columns A, B, D, and E have been eliminated.

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Price Cap Tariff Review Plan
Exogenous Cost Changes

	OTHER (1)	OTHER (2)	OTHER (3)	OTHER (4)	OTHER (5)	TOTAL
	(L)	(M)	(N)	(O)	(P)	(Q)
COMMON LINE Revenue Effect						
100 Depreciation Expense	0	0	0	0	0	N/A
110 Expense less Depreciation	0	0	0	0	0	N/A
120 Taxes less F.I.T.	0	0	0	0	0	N/A
130 Net Return	0	0	0	0	0	N/A
140 F.I.T.	0	0	0	0	0	N/A
150 Uncollectible Rev. & Other Adj.	0	0	0	0	0	N/A
160 Revenue Effects	0	0	0	0	0	0
TRAFFIC SENSITIVE Revenue Effect						
300 Depreciation Expense	0	0	0	0	0	N/A
310 Expense less Depreciation	0	0	0	0	0	N/A
320 Taxes less F.I.T.	0	0	0	0	0	N/A
330 Net Return	0	0	0	0	0	N/A
340 F.I.T.	0	0	0	0	0	N/A
350 Uncollectible Rev. & Other Adj.	0	0	0	0	0	N/A
360 Revenue Effects	0	0	0	0	0	0
TRUNKING Revenue Effect						
500 Depreciation Expense	0	0	0	0	0	N/A
510 Expense less Depreciation	0	0	0	0	0	N/A
520 Taxes less F.I.T.	0	0	0	0	0	N/A
530 Net Return	0	0	0	0	0	N/A
540 F.I.T.	0	0	0	0	0	N/A
550 Uncollectible Rev. & Other Adj.	0	0	0	0	0	N/A
560 Revenue Effects	0	0	0	0	0	0
INTEREXCHANGE Revenue Effect						
700 Depreciation Expense	0	0	0	0	0	N/A
710 Expense less Depreciation	0	0	0	0	0	N/A
720 Taxes less F.I.T.	0	0	0	0	0	N/A
730 Net Return	0	0	0	0	0	N/A
740 F.I.T.	0	0	0	0	0	N/A
750 Uncollectible Rev. & Other Adj.	0	0	0	0	0	N/A
760 Revenue Effects	0	0	0	0	0	0

NOTE: (1) Total may not equal sum of changes due to interactive effects.
(2) Display whole numbers.
(3) Most column labelling letters match 1994 labels. 1994's Columns A, B, D, and E have been eliminated.

(4) Descriptions of "Other" Exogenous Costs
Other 1:
Other 2:
Other 3:
Other 4:
Other 5:

RTE-1
Filing Date: 3/31/95
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Price Cap Tariff Review Plan
Common Line Basket

		BASE PERIOD DEMAND	RATES AT LAST PCI UPDATE	CURRENT RATES	PROPOSED RATES	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE	BASE PERIOD DEMAND x CURRENT RATES	BASE PERIOD DEMAND x PROPOSED RATES	INDEX RESULTS
		(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
	End User Common Line								
100	Multiline Business EUCL (1)		0	0.00000000	0.00000000	0.00000000	0	0	0 N/A
110	Res & Single Line Bus EUCL (1)		0	0.00000000	0.00000000	0.00000000	0	0	0 N/A
120	Lifeline EUCL (1)		0	0.00000000	0.00000000	0.00000000	0	0	0 N/A
130	Special Access Surcharge		0	0.00	0.00	0.00	0	0	0 N/A
	Carrier Common Line								
140	Terminating CCL Prem.		0	0.00000000	0.00000000	0.00000000	0	0	0 N/A
150	Terminating CCL Non-Prem.		0	0.00000000	0.00000000	0.00000000	0	0	0 N/A
160	Originating CCL Prem.		0	0.00000000	0.00000000	0.00000000	0	0	0 N/A
170	Originating CCL Non-Prem.		0	0.00000000	0.00000000	0.00000000	0	0	0 N/A
180	Other Common Line	N/A		N/A	N/A	N/A	0	0	0 N/A
190	Total Basket	N/A		N/A	N/A	N/A	0	0	0 N/A

NOTE: (1) May be composite rate.
(2) Display indexes as percents to four decimal places (e.g., display 100% as 100.0000).
(3) Display revenues and demands as whole numbers.

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RTE-1
Filing Date: 3/31/95
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Price Cap Tariff Review Plan
Traffic Sensitive Basket

	BASE PERIOD DEMAND	RATES AT LAST PCI UPDATE	CURRENT RATES	PROPOSED RATES	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE	BASE PERIOD DEMAND x CURRENT RATES	BASE PERIOD DEMAND x PROPOSED RATES	INDEX RESULTS
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Local Switching Service Category								
200 Premium Switching LS1 FG	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
210 Premium Switching LS2 FG	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
220 Non-Premium Switching FG	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
230 Premium Switching LS1 BSA	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
240 Premium Switching LS2 BSA	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
250 Non-Premium Switching BSA	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
260 Premium Switching LS1 FG - Recast	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
270 Premium Switching LS2 FG - Recast	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
280 Non-Premium Switching FG - Recast	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
290 Equal Access	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
300 Other ONA	N/A	N/A	N/A	N/A	0	0	0	N/A
310 Other ONA - Recast FG	N/A	N/A	N/A	N/A	0	0	0	N/A
320 Other Switching	N/A	N/A	N/A	N/A	0	0	0	N/A
360 Total Service Category	N/A	N/A	N/A	N/A	0	0	0	N/A
385 SBI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
390 Upper SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
395 Lower SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
Information Service Category								
400 Information - Per MSG	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
410 Info-Premium Surcharge	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
420 Info-Non-Premium Surcharge	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
430 Information-Other	N/A	N/A	N/A	N/A	0	0	0	N/A
480 Total Service Category	N/A	N/A	N/A	N/A	0	0	0	N/A
485 SBI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
490 Upper SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
495 Lower SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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RTE-1
Filing Date: 3/31/95
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Price Cap Tariff Review Plan
Traffic Sensitive Basket

	BASE PERIOD DEMAND	RATES AT LAST PCI UPDATE	CURRENT RATES	PROPOSED RATES	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE	BASE PERIOD DEMAND x CURRENT RATES	BASE PERIOD DEMAND x PROPOSED RATES	INDEX RESULTS
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Database Access Category								
800 DB VERTICAL SERVICES SUB-CAT								
530 Vertical Features	N/A	N/A	N/A	N/A	0	0	0	N/A
535 Vertical Services SubIndex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
540 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
545 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
550 Basic 800	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
560 Other 800 Service	N/A	N/A	N/A	N/A	0	0	0	N/A
580 Total Service Category	N/A	N/A	N/A	N/A	0	0	0	N/A
585 SBI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
590 Upper SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
595 Lower SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
Billing Name and Address (BNA) Category								
680 Total Service Category	N/A	N/A	N/A	N/A	253	253	253	N/A
685 SBI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
690 Upper SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
695 Lower SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
970 Total Basket	N/A	N/A	N/A	N/A	0	0	0	N/A
980 Total API	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
990 Total PCI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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Price Cap Tariff Review Plan
Trunking Basket

	Interconnection Charge Service Category	BASE PERIOD DEMAND (A)	RATES AT LAST PCI UPDATE (B)	CURRENT RATES (C)	PROPOSED RATES (D)	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE (E)	BASE PERIOD DEMAND x CURRENT RATES (F)	BASE PERIOD DEMAND x PROPOSED RATES (G)	INDEX RESULTS (H)
1000	Interconnection Charge - Premium	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
1010	Interconnection Charge - Non-Premium	0	0.00000000	0.00000000	0.00000000	0	0	0	N/A
1020	Other	N/A	N/A	N/A	N/A	0	0	0	N/A
1080	Total Service Category	N/A	N/A	N/A	N/A	0	0	0	N/A
1085	SBI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1090	Upper SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1095	Lower SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Price Cap Tariff Review Plan
Trunking Basket

		BASE PERIOD DEMAND		RATES AT LAST PCI UPDATE	CURRENT RATES	PROPOSED RATES	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE	BASE PERIOD DEMAND x CURRENT RATES	BASE PERIOD DEMAND x PROPOSED RATES	INDEX RESULTS
	Tandem Switched Transport Service Category	(A)		(B)	(C)	(D)	(E)	(F)	(G)	(H)
	TandemSwitchedTransport, Density Zone 1									
1100	Tandem Switched Transmission - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
1110	Tandem Switched Transmission - Variable		0	N/A	N/A	N/A	0	0	0	N/A
1120	Tandem Switching	N/A		N/A	N/A	N/A	0	0	0	N/A
1140	Other	N/A		N/A	N/A	N/A	0	0	0	N/A
1180	Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
1185	SubIndex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1190	Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1195	Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
	TandemSwitchedTransport, Density Zone 2									
1200	Tandem Switched Transmission - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
1210	Tandem Switched Transmission - Variable		0	N/A	N/A	N/A	0	0	0	N/A
1220	Tandem Switching	N/A		N/A	N/A	N/A	0	0	0	N/A
1240	Other	N/A		N/A	N/A	N/A	0	0	0	N/A
1280	Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
1285	SubIndex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1290	Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1295	Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
	TandemSwitchedTransport, Density Zone 3									
1300	Tandem Switched Transmission - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
1310	Tandem Switched Transmission - Variable		0	N/A	N/A	N/A	0	0	0	N/A
1320	Tandem Switching	N/A		N/A	N/A	N/A	0	0	0	N/A
1340	Other	N/A		N/A	N/A	N/A	0	0	0	N/A
1380	Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
1385	SubIndex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1390	Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1395	Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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1390 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1395 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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Price Cap Tariff Review Plan
Trunking Basket

	BASE PERIOD DEMAND	RATES AT LAST PCI UPDATE	CURRENT RATES	PROPOSED RATES	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE	BASE PERIOD DEMAND x CURRENT RATES	BASE PERIOD DEMAND x PROPOSED RATES	INDEX RESULTS
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Tandem Switched Transport Service Category (contd)								
TandemSwitchedTransport, Non-Density Zone								
1400 Tandem Switched Transmission - Fixed	0	N/A	N/A	N/A	0	0	0	N/A
1410 Tandem Switched Transmission - Variable	0	N/A	N/A	N/A	0	0	0	N/A
1420 Tandem Switching	N/A	N/A	N/A	N/A	0	0	0	N/A
1440 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
1480 TOTAL TandemSwitchedTransport Svc Cat	N/A	N/A	N/A	N/A	0	0	0	N/A
1485 SBI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1490 Upper SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1495 Lower SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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Price Cap Tariff Review Plan
Trunking Basket

	Voice Grade, WATS, Metallic, & Telegraph Service Category	BASE PERIOD DEMAND (A)		RATES AT LAST PCI UPDATE (B)	CURRENT RATES (C)	PROPOSED RATES (D)	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE (E)	BASE PERIOD DEMAND x CURRENT RATES (F)	BASE PERIOD DEMAND x PROPOSED RATES (G)	INDEX RESULTS (H)
	VG DTT/EF Density Zone 1									
1500	Entrance Facility		0	N/A	N/A	N/A	0	0	0	N/A
1510	Inter-Office Transport - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
1520	Inter-Office Transport - Variable		0	N/A	N/A	N/A	0	0	0	N/A
1540	Other	N/A		N/A	N/A	N/A	0	0	0	N/A
1580	Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
1585	Subindex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1590	Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1595	Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
	VG DTT/EF Density Zone 2									
1600	Entrance Facility		0	N/A	N/A	N/A	0	0	0	N/A
1610	Inter-Office Transport - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
1620	Inter-Office Transport - Variable		0	N/A	N/A	N/A	0	0	0	N/A
1640	Other	N/A		N/A	N/A	N/A	0	0	0	N/A
1680	Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
1685	Subindex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1690	Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1695	Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
	VG DTT/EF Density Zone 3									
1700	Entrance Facility		0	N/A	N/A	N/A	0	0	0	N/A
1710	Inter-Office Transport - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
1720	Inter-Office Transport - Variable		0	N/A	N/A	N/A	0	0	0	N/A
1740	Other	N/A		N/A	N/A	N/A	0	0	0	N/A
1780	Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
1785	Subindex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1790	Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1795	Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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1785 SubIndex	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1790 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1795 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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Price Cap Tariff Review Plan
Trunking Basket

Voice Grade, WATS, Metallic, & Telegraph Service Category	BASE PERIOD DEMAND (A)	RATES AT LAST PCI UPDATE (B)	CURRENT RATES (C)	PROPOSED RATES (D)	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE (E)	BASE PERIOD DEMAND x CURRENT RATES (F)	BASE PERIOD DEMAND x PROPOSED RATES (G)	INDEX RESULTS (H)
Non-Density Zone								
VOICE GRADE & WATS:								
1800 ChanTerm/Entrance Facility - 2 Wire	0	N/A	N/A	N/A	0	0	0	N/A
1805 ChanTerm/Entrance Facility - 4 Wire	0	N/A	N/A	N/A	0	0	0	N/A
1810 Inter-Office Transport - Fixed	0	N/A	N/A	N/A	0	0	0	N/A
1820 Inter-Office Transport - Variable	0	N/A	N/A	N/A	0	0	0	N/A
1840 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
METALLIC:								
1850 ChanTerm/Entrance Facility	0	N/A	N/A	N/A	0	0	0	N/A
1860 Inter-Office Transport - Fixed	0	N/A	N/A	N/A	0	0	0	N/A
1870 Inter-Office Transport - Variable	0	N/A	N/A	N/A	0	0	0	N/A
1890 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
TELEGRAPH:								
1900 ChanTerm/Entrance Facility - 2 Wire	0	N/A	N/A	N/A	0	0	0	N/A
1905 ChanTerm/Entrance Facility - 4 Wire	0	N/A	N/A	N/A	0	0	0	N/A
1910 Inter-Office Transport - Fixed	0	N/A	N/A	N/A	0	0	0	N/A
1920 Inter-Office Transport - Variable	0	N/A	N/A	N/A	0	0	0	N/A
1940 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
1950 OTHER	N/A	N/A	N/A	N/A	0	0	0	N/A
1960 Total "Switched"	N/A	N/A	N/A	N/A	0	0	0	N/A
1965 Total "Special"	N/A	N/A	N/A	N/A	0	0	0	N/A
1980 Total Service Category	N/A	N/A	N/A	N/A	0	0	0	N/A
1985 SBI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1990 Upper SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
1995 Lower SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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Price Cap Tariff Review Plan
Trunking Basket

Audio & Video Service Category	BASE PERIOD DEMAND (A)	RATES AT LAST PCI UPDATE (B)	CURRENT RATES (C)	PROPOSED RATES (D)	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE (E)	BASE PERIOD DEMAND x CURRENT RATES (F)	BASE PERIOD DEMAND x PROPOSED RATES (G)	INDEX RESULTS (H)
AUDIO:								
2000 Channel Term	0	N/A	N/A	N/A	0	0	0	N/A
2010 Inter-Office Transport - Fixed	0	N/A	N/A	N/A	0	0	0	N/A
2020 Inter-Office Transport - Variable	0	N/A	N/A	N/A	0	0	0	N/A
2040 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
VIDEO:								
2050 Channel Term	0	N/A	N/A	N/A	0	0	0	N/A
2060 Inter-Office Transport - Fixed	0	N/A	N/A	N/A	0	0	0	N/A
2070 Inter-Office Transport - Variable	0	N/A	N/A	N/A	0	0	0	N/A
2090 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
2100 Other Audio and Video	N/A	N/A	N/A	N/A	0	0	0	N/A
2160 Total Service Category	N/A	N/A	N/A	N/A	0	0	0	N/A
2165 SBI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2190 Upper SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2195 Lower SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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	BASE PERIOD DEMAND	RATES AT LAST PCI UPDATE	CURRENT RATES	PROPOSED RATES	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE	BASE PERIOD DEMAND x CURRENT RATES	BASE PERIOD DEMAND x PROPOSED RATES	INDEX RESULTS
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
High Cap & DDS Service Category								
DS1, Special Access Density Zone 1:								
2200 ChanTerm/Entrance Facility	0	N/A	N/A	N/A	0	0	0	N/A
2210 Inter-Office Transport - Fixed	0	N/A	N/A	N/A	0	0	0	N/A
2220 Inter-Office Transport - Variable	0	N/A	N/A	N/A	0	0	0	N/A
2240 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
2260 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A	0	0	0	N/A
2265 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2290 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2295 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
DS1, Special Access Density Zone 2:								
2300 ChanTerm/Entrance Facility	0	N/A	N/A	N/A	0	0	0	N/A
2310 Inter-Office Transport - Fixed	0	N/A	N/A	N/A	0	0	0	N/A
2320 Inter-Office Transport - Variable	0	N/A	N/A	N/A	0	0	0	N/A
2340 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
2360 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A	0	0	0	N/A
2365 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2390 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2395 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
DS1, Special Access Density Zone 3:								
2400 ChanTerm/Entrance Facility	0	N/A	N/A	N/A	0	0	0	N/A
2410 Inter-Office Transport - Fixed	0	N/A	N/A	N/A	0	0	0	N/A
2420 Inter-Office Transport - Variable	0	N/A	N/A	N/A	0	0	0	N/A
2440 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
2460 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A	0	0	0	N/A
2465 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2490 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2495 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

Price Cap Tariff Review Plan
Trunking Basket

	High Cap & DDS Service Category	BASE PERIOD DEMAND (A)		RATES AT LAST PCI UPDATE (B)	CURRENT RATES (C)	PROPOSED RATES (D)	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE (E)	BASE PERIOD DEMAND x CURRENT RATES (F)	BASE PERIOD DEMAND x PROPOSED RATES (G)	INDEX RESULTS (H)
	DS1, DTT/EF Density Zone 1:									
2500	ChanTerm/Entrance Facility		0	N/A	N/A	N/A	0	0	0	N/A
2510	Inter-Office Transport - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
2520	Inter-Office Transport - Variable		0	N/A	N/A	N/A	0	0	0	N/A
2540	Other	N/A		N/A	N/A	N/A	0	0	0	N/A
2580	Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
2585	Subindex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2590	Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2595	Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
	DS1, DTT/EF Density Zone 2:									
2600	ChanTerm/Entrance Facility		0	N/A	N/A	N/A	0	0	0	N/A
2610	Inter-Office Transport - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
2620	Inter-Office Transport - Variable		0	N/A	N/A	N/A	0	0	0	N/A
2640	Other	N/A		N/A	N/A	N/A	0	0	0	N/A
2680	Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
2685	Subindex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2690	Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2695	Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
	DS1, DTT/EF Density Zone 3:									
2700	ChanTerm/Entrance Facility		0	N/A	N/A	N/A	0	0	0	N/A
2710	Inter-Office Transport - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
2720	Inter-Office Transport - Variable		0	N/A	N/A	N/A	0	0	0	N/A
2740	Other	N/A		N/A	N/A	N/A	0	0	0	N/A
2780	Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
2785	Subindex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2790	Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2795	Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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2765 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2790 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2795 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	

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High Cap & DDS Service Category	BASE PERIOD DEMAND (A)		RATES AT LAST PCI UPDATE (B)	CURRENT RATES (C)	PROPOSED RATES (D)	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE (E)	BASE PERIOD DEMAND x CURRENT RATES (F)	BASE PERIOD DEMAND x PROPOSED RATES (G)	INDEX RESULTS (H)
DS1, Combined Density Zone 1:									
2800 ChanTerm/Entrance Facility		0	N/A	N/A	N/A	0	0	0	N/A
2810 Inter-Office Transport - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
2820 Inter-Office Transport - Variable		0	N/A	N/A	N/A	0	0	0	N/A
2840 Other	N/A		N/A	N/A	N/A	0	0	0	N/A
2860 Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
2865 Subindex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2890 Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2895 Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
DS1, Combined Density Zone 2:									
2900 ChanTerm/Entrance Facility		0	N/A	N/A	N/A	0	0	0	N/A
2910 Inter-Office Transport - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
2920 Inter-Office Transport - Variable		0	N/A	N/A	N/A	0	0	0	N/A
2940 Other	N/A		N/A	N/A	N/A	0	0	0	N/A
2960 Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
2965 Subindex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2990 Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
2995 Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
DS1, Combined Density Zone 3:									
3000 ChanTerm/Entrance Facility		0	N/A	N/A	N/A	0	0	0	N/A
3010 Inter-Office Transport - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
3020 Inter-Office Transport - Variable		0	N/A	N/A	N/A	0	0	0	N/A
3040 Other	N/A		N/A	N/A	N/A	0	0	0	N/A
3060 Total Density Zone Sub-Category	N/A		N/A	N/A	N/A	0	0	0	N/A
3065 Subindex	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3090 Upper Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3095 Lower Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000

RTE-1
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Filing Entity: test
Transmittal Number: 99999
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Price Cap Tariff Review Plan
Trunking Basket

High Cap & DDS Service Category	BASE PERIOD DEMAND	RATES AT LAST PCI UPDATE	CURRENT RATES	PROPOSED RATES	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE	BASE PERIOD DEMAND x CURRENT RATES	BASE PERIOD DEMAND x PROPOSED RATES	INDEX RESULTS
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
DS1, Non-Density Zone								
3100 ChanTerm/Entrance Facility	0	N/A	N/A	N/A	0	0	0	N/A
3110 Inter-Office Transport - Fixed	0	N/A	N/A	N/A	0	0	0	N/A
3120 Inter-Office Transport - Variable	0	N/A	N/A	N/A	0	0	0	N/A
3140 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
3180 TOTAL DS1 Sub-Category	N/A	N/A	N/A	N/A	0	0	0	N/A
3185 DS1 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3190 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3195 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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Price Cap Tariff Review Plan
Trunking Basket

High Cap & DDS Service Category	BASE PERIOD DEMAND (A)	RATES AT LAST PCI UPDATE (B)	CURRENT RATES (C)	PROPOSED RATES (D)	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE (E)	BASE PERIOD DEMAND x CURRENT RATES (F)	BASE PERIOD DEMAND x PROPOSED RATES (G)	INDEX RESULTS (H)
DS3, Special Access Density Zone 1:								
3300 ChanTerm/Entrance Facility	N/A	N/A	N/A	N/A	0	0	0	N/A
3310 Inter-Office Transport - Fixed	N/A	N/A	N/A	N/A	0	0	0	N/A
3320 Inter-Office Transport - Variable	N/A	N/A	N/A	N/A	0	0	0	N/A
3340 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
3380 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A	0	0	0	N/A
3385 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3390 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3395 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
DS3, Special Access Density Zone 2:								
3400 ChanTerm/Entrance Facility	N/A	N/A	N/A	N/A	0	0	0	N/A
3410 Inter-Office Transport - Fixed	N/A	N/A	N/A	N/A	0	0	0	N/A
3420 Inter-Office Transport - Variable	N/A	N/A	N/A	N/A	0	0	0	N/A
3440 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
3480 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A	0	0	0	N/A
3485 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3490 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3495 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
DS3, Special Access Density Zone 3:								
3500 ChanTerm/Entrance Facility	N/A	N/A	N/A	N/A	0	0	0	N/A
3510 Inter-Office Transport - Fixed	N/A	N/A	N/A	N/A	0	0	0	N/A
3520 Inter-Office Transport - Variable	N/A	N/A	N/A	N/A	0	0	0	N/A
3540 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
3580 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A	0	0	0	N/A
3585 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3590 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3595 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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Price Cap Tariff Review Plan
Trunking Basket

High Cap & DDS Service Category	BASE PERIOD DEMAND (A)	RATES AT LAST PCI UPDATE (B)	CURRENT RATES (C)	PROPOSED RATES (D)	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE (E)	BASE PERIOD DEMAND x CURRENT RATES (F)	BASE PERIOD DEMAND x PROPOSED RATES (G)	INDEX RESULTS (H)
DS3, DTT/EF Density Zone 1:								
3600 ChanTerm/Entrance Facility	N/A	N/A	N/A	N/A	0	0	0	N/A
3610 Inter-Office Transport - Fixed	N/A	N/A	N/A	N/A	0	0	0	N/A
3620 Inter-Office Transport - Variable	N/A	N/A	N/A	N/A	0	0	0	N/A
3640 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
3660 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A				
3665 SubIndex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3690 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3695 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
DS3, DTT/EF Density Zone 2:								
3700 ChanTerm/Entrance Facility	N/A	N/A	N/A	N/A	0	0	0	N/A
3710 Inter-Office Transport - Fixed	N/A	N/A	N/A	N/A	0	0	0	N/A
3720 Inter-Office Transport - Variable	N/A	N/A	N/A	N/A	0	0	0	N/A
3740 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
3760 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A				
3765 SubIndex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3790 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3795 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
DS3, DTT/EF Density Zone 3:								
3800 ChanTerm/Entrance Facility	N/A	N/A	N/A	N/A	0	0	0	N/A
3810 Inter-Office Transport - Fixed	N/A	N/A	N/A	N/A	0	0	0	N/A
3820 Inter-Office Transport - Variable	N/A	N/A	N/A	N/A	0	0	0	N/A
3840 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
3860 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A				
3865 SubIndex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3890 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3895 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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3885 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3890 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	
3895 Lower Limit	N/A	N/A	N/A				

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Price Cap Tariff Review Plan
Trunking Basket

High Cap & DDS Service Category	BASE PERIOD DEMAND (A)	RATES AT LAST PCI UPDATE (B)	CURRENT RATES (C)	PROPOSED RATES (D)	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE (E)	BASE PERIOD DEMAND x CURRENT RATES (F)	BASE PERIOD DEMAND x PROPOSED RATES (G)	INDEX RESULTS (H)
DS3, Combined Density Zone 1:								
3900 ChanTerm/Entrance Facility	N/A	N/A	N/A	N/A	0	0	0	N/A
3910 Inter-Office Transport - Fixed	N/A	N/A	N/A	N/A	0	0	0	N/A
3920 Inter-Office Transport - Variable	N/A	N/A	N/A	N/A	0	0	0	N/A
3940 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
3980 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A	0	0	0	N/A
3985 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3990 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
3995 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
DS3, Combined Density Zone 2:								
4000 ChanTerm/Entrance Facility	N/A	N/A	N/A	N/A	0	0	0	N/A
4010 Inter-Office Transport - Fixed	N/A	N/A	N/A	N/A	0	0	0	N/A
4020 Inter-Office Transport - Variable	N/A	N/A	N/A	N/A	0	0	0	N/A
4040 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
4080 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A	0	0	0	N/A
4085 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4090 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4095 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
DS3, Combined Density Zone 3:								
4100 ChanTerm/Entrance Facility	N/A	N/A	N/A	N/A	0	0	0	N/A
4110 Inter-Office Transport - Fixed	N/A	N/A	N/A	N/A	0	0	0	N/A
4120 Inter-Office Transport - Variable	N/A	N/A	N/A	N/A	0	0	0	N/A
4140 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
4180 Total Density Zone Sub-Category	N/A	N/A	N/A	N/A	0	0	0	N/A
4185 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4190 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4195 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

Price Cap Tariff Review Plan
Trunking Basket

High Cap & DDS Service Category	BASE PERIOD DEMAND (A)	RATES AT LAST PCI UPDATE (B)	CURRENT RATES (C)	PROPOSED RATES (D)	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE (E)	BASE PERIOD DEMAND x CURRENT RATES (F)	BASE PERIOD DEMAND x PROPOSED RATES (G)	INDEX RESULTS (H)
DS3, Non-Density Zone:								
4200 ChanTerm/Entrance Facility	N/A	N/A	N/A	N/A	0	0	0	N/A
4210 Inter-Office Transport - Fixed	N/A	N/A	N/A	N/A	0	0	0	N/A
4220 Inter-Office Transport - Variable	N/A	N/A	N/A	N/A	0	0	0	N/A
4240 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
4260 TOTAL DS3 Sub-Category	N/A	N/A	N/A	N/A	0	0	0	N/A
4285 DS3 Subindex	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4290 Upper Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4295 Lower Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
DDS:								
4300 Channel Term	0	N/A	N/A	N/A	0	0	0	N/A
4310 Inter-Office Transport - Fixed	0	N/A	N/A	N/A	0	0	0	N/A
4320 Inter-Office Transport - Variable	0	N/A	N/A	N/A	0	0	0	N/A
4340 Other	N/A	N/A	N/A	N/A	0	0	0	N/A
4350 OTHER HIGH-CAP & DDS	N/A	N/A	N/A	N/A	0	0	0	N/A
4360 Total "Switched"	N/A	N/A	N/A	N/A	0	0	0	N/A
4365 Total "Special"	N/A	N/A	N/A	N/A	0	0	0	N/A
4380 TOTAL Service Category	N/A	N/A	N/A	N/A	0	0	0	N/A
4385 SBI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4390 Upper SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4395 Lower SBI Limit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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Price Cap Tariff Review Plan
Trunking Basket

		BASE PERIOD DEMAND		RATES AT LAST PCI UPDATE	CURRENT RATES	PROPOSED RATES	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE	BASE PERIOD DEMAND x CURRENT RATES	BASE PERIOD DEMAND x PROPOSED RATES	INDEX RESULTS
		(A)		(B)	(C)	(D)	(E)	(F)	(G)	(H)
	Wideband Service Category									
	DATA:									
4400	Channel Term		0	N/A	N/A	N/A	0	0	0	N/A
4410	Inter-Office Transport - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
4420	Inter-Office Transport - Variable		0	N/A	N/A	N/A	0	0	0	N/A
4440	Other	N/A		N/A	N/A	N/A	0	0	0	N/A
	ANALOG:									
4450	Channel Term		0	N/A	N/A	N/A	0	0	0	N/A
4460	Inter-Office Transport - Fixed		0	N/A	N/A	N/A	0	0	0	N/A
4470	Inter-Office Transport - Variable		0	N/A	N/A	N/A	0	0	0	N/A
4490	Other	N/A		N/A	N/A	N/A	0	0	0	N/A
4500	Other Wideband	N/A		N/A	N/A	N/A	0	0	0	N/A
4580	Total Service Category	N/A		N/A	N/A	N/A	0	0	0	N/A
4585	SBI	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4590	Upper SBI Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4595	Lower SBI Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
	Signalling Interconnection									
4600	Signalling Interconnection Elements	N/A		N/A	N/A	N/A	0	0	0	N/A
4685	SBI	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4690	Upper SBI Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4695	Lower SBI Limit	N/A		N/A	N/A	N/A	N/A	N/A	N/A	N/A
4970	Total Basket	N/A		N/A	N/A	N/A	0	0	0	N/A
4980	Total API	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000
4990	Total PCI	N/A		N/A	N/A	N/A	N/A	N/A	N/A	0.0000

Price Cap Tariff Review Plan
Interexchange Basket

		BASE PERIOD DEMAND	RATES AT LAST PCI UPDATE	CURRENT RATES	PROPOSED RATES	BASE PERIOD DEMAND x RATES AT LAST PCI UPDATE	BASE PERIOD DEMAND x CURRENT RATES	BASE PERIOD DEMAND x PROPOSED RATES	INDEX RESULTS
		(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
	Interexchange								
5000	Total Basket	N/A	N/A	N/A	N/A	0	0	0	N/A
5010	Total API	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000
5020	Total PCI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0.0000

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FOOTNOTES
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Price Cap Tariff Review Plan
Footnotes

Appendix B

Rate of Return
Tariff Review Plan

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Cost Support Material)
to be Filed With)
1995 Annual Access Tariffs)

Approved by OMB
3060-0400
Expires June 30, 1996

See Below for information regarding public burden estimate

NOTICE: The Tariff Review Plans (TRPs) contain summary cost support material that certain local exchange carriers (LECs) should file to support their annual access charge tariff filings in partial fulfillment of Sections 61.38 and 61.44 through 61.49 of the Commission's Rules. The TRPs specify basic cost and demand information in a consistent format and are essential components of the Commission's access tariff review process. The information in the TRPs is used by the FCC to evaluate rates. Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FILING ENTITY: _____

RATE OF RETURN
PROSPECTIVE COST ANALYSIS SUMMARY

	TEST YEAR FORECAST 7/95 THRU 6/96	TOTAL COMPANY (A)	ADJUSTMENTS PART 64 (B)	ADJUSTMENTS OTHER (C)	TOTAL COMPANY SUBJECT TO SEPARATIONS (D)=A–B–C
	REVENUES				
100	Network Access	N/A	N/A	N/A	N/A
110	Uncollectibles	N/A	N/A	N/A	N/A
120	Common Line Support (Note 1)	N/A	N/A	N/A	N/A
130	Long Term	N/A	N/A	N/A	N/A
140	Transitional	N/A	N/A	N/A	N/A
150	Miscellaneous	N/A	N/A	N/A	N/A
160	Net Revenues	N/A	N/A	N/A	N/A
	EXPENSES				
170	Plant Specific	N/A	N/A	N/A	N/A
180	Plant Non–Specific excl Dep & Amor	N/A	N/A	N/A	N/A
190	Depreciation/Amortization				
200	Customer Operations	N/A	N/A	N/A	N/A
210	Access	N/A	N/A	N/A	N/A
220	Corporate Operations	N/A	N/A	N/A	N/A
230	AFUDC	N/A	N/A	N/A	N/A
240	Other Expenses and Adjustments	N/A	N/A	N/A	N/A
250	Taxes Other than FIT	N/A	N/A	N/A	N/A
260	Total Expenses and Other Taxes	N/A	N/A	N/A	N/A
	FIT ADJUSTMENTS				
270	Adjustments for FIT				
280	Amortized ITC				
290	Federal Income Taxes	N/A	N/A	N/A	N/A
300	TOTAL EXPENSES AND TAXES	N/A	N/A	N/A	N/A
	TELEPHONE PLANT IN SERVICE				
310	General Support				
320	Central Office Equipment – Switch				
330	Central Office Equipment – Trans				
340	Cable and Wire				
350	Info Orig/Term Equipment				
360	Amortizable Assets				
370	Total Plant in Service				
	ADJUSTMENTS TO TPIS				
380	Depreciation/Amortization Reserve				
390	Accum Deferred Income Tax				
400	Other Rate Base Adjustments	N/A	N/A	N/A	N/A
	RETURN DATA				
410	Average Rate Base	N/A	N/A	N/A	N/A
420	Return	N/A	N/A	N/A	N/A
430	Rate of Return	N/A	N/A	N/A	N/A

Note 1: CCL support data contained on Lines 120 thru 140 is not applicable for companies that participate in the NECA pools.

FILING ENTITY: _____

RATE OF RETURN
PROSPECTIVE COST ANALYSIS SUMMARY

	TEST YEAR FORECAST 7/95 THRU 6/96	INTERSTATE	BILLING & COLLECTION	INTEREXCHANGE	ROR REGULATED IS ACCESS
		(E)	(F)	(G)	(H)=E–F–G
	REVENUES				
100	Network Access	N/A	N/A	N/A	_____
110	Uncollectibles	N/A	N/A	N/A	_____
120	Common Line Support (Note 1)	N/A	N/A	N/A	_____
130	Long Term	N/A	N/A	N/A	_____
140	Transitional	N/A	N/A	N/A	_____
150	Miscellaneous	N/A	N/A	N/A	_____
160	Net Revenues	N/A	N/A	N/A	_____
	EXPENSES				
170	Plant Specific	_____	_____	_____	_____
180	Plant Non–Specific excl Dep & Amor	_____	_____	_____	_____
190	Depreciation/Amortization	_____	_____	_____	_____
200	Customer Operations	_____	_____	_____	_____
210	Access	_____	N/A	_____	N/A
220	Corporate Operations	_____	_____	_____	_____
230	AFUDC	N/A	N/A	N/A	_____
240	Other Expenses and Adjustments	_____	_____	_____	_____
250	Taxes Other than FIT	_____	_____	_____	_____
260	Total Expenses and Other Taxes	_____	_____	_____	_____
	FIT ADJUSTMENTS				
270	Adjustments for FIT	_____	_____	_____	_____
280	Amortized ITC	_____	_____	_____	_____
290	Federal Income Taxes	_____	N/A	N/A	_____
300	TOTAL EXPENSES AND TAXES	_____	N/A	N/A	_____
	TELEPHONE PLANT IN SERVICE				
310	General Support	_____	_____	_____	_____
320	Central Office Equipment – Switch	_____	_____	_____	_____
330	Central Office Equipment – Trans	_____	_____	_____	_____
340	Cable and Wire	_____	_____	_____	_____
350	Info Orig/Term Equipment	_____	_____	_____	_____
360	Amortizable Assets	_____	_____	_____	_____
370	Total Plant in Service	_____	_____	_____	_____
	ADJUSTMENTS TO TPIS				
380	Depreciation/Amortization Reserve	_____	_____	_____	_____
390	Accum Deferred Income Tax	_____	_____	_____	_____
400	Other Rate Base Adjustments	_____	_____	_____	_____
	RETURN DATA				
410	Average Rate Base	_____	N/A	N/A	_____
420	Return	N/A	N/A	N/A	_____
430	Rate of Return	N/A	N/A	N/A	_____

Note 1: CCL support data contained on Lines 120 thru 140 is not applicable for companies that participate in the NECA pools.

FILING ENTITY: _____

RATE OF RETURN
PROSPECTIVE COST ANALYSIS SUMMARY

TEST YEAR FORECAST 7/95 THRU 6/96	COMMON LINE PAY PHONE (I)	INSIDE WIRE (J)	BFP (K)	TOTAL (L)=I+J+K
REVENUES				
100 Network Access				
110 Uncollectibles				
120 Common Line Support (Note 1)				
130 Long Term				
140 Transitional				
150 Miscellaneous				
160 Net Revenues				
EXPENSES				
170 Plant Specific				
180 Plant Non–Specific excl Dep & Amor				
190 Depreciation/Amortization				
200 Customer Operations				
210 Access	N/A	N/A	N/A	N/A
220 Corporate Operations				
230 AFUDC				
240 Other Expenses and Adjustments				
250 Taxes Other than FIT				
260 Total Expenses and Other Taxes				
FIT ADJUSTMENTS				
270 Adjustments for FIT				
280 Amortized ITC				
290 Federal Income Taxes				
300 TOTAL EXPENSES AND TAXES				
TELEPHONE PLANT IN SERVICE				
310 General Support				
320 Central Office Equipment – Switch				
330 Central Office Equipment – Trans				
340 Cable and Wire				
350 Info Orig/Term Equipment				
360 Amortizable Assets				
370 Total Plant in Service				
ADJUSTMENTS TO TPIS				
380 Depreciation/Amortization Reserve				
390 Accum Deferred Income Tax				
400 Other Rate Base Adjustments				
RETURN DATA				
410 Average Rate Base				
420 Return				
430 Rate of Return				

Note 1: CCL support data contained on Lines 120 thru 140 is not applicable for companies that participate in the NECA pools.

FILING ENTITY: _____

RATE OF RETURN
PROSPECTIVE COST ANALYSIS SUMMARY

TEST YEAR FORECAST 7/95 THRU 6/96	SWITCHED TRAFFIC SENSITVIE: LOCAL SWITCHING (M)	EQUAL ACCESS (N)	LOCAL TRANSPORT (O)	INFORMATION (P)	TOTAL SWTCH TRFFC SNSTV (Q)=M+N+O+P	SPECIAL ACCESS (R)
REVENUES						
100 Network Access						
110 Uncollectibles						
120 Common Line Support (Note 1)	N/A	N/A	N/A	N/A	N/A	N/A
130 Long Term	N/A	N/A	N/A	N/A	N/A	N/A
140 Transitional	N/A	N/A	N/A	N/A	N/A	N/A
150 Miscellaneous						
160 Net Revenues						
EXPENSES						
170 Plant Specific						
180 Plant Non-Specific excl Dep & Amor						
190 Depreciation/Amortization						
200 Customer Operations						
210 Access	N/A	N/A	N/A	N/A	N/A	N/A
220 Corporate Operations						
230 AFUDC						
240 Other Expenses and Adjustments						
250 Taxes Other than FIT						
260 Total Expenses and Other Taxes						
FIT ADJUSTMENTS						
270 Adjustments for FIT						
280 Amortized ITC						
290 Federal Income Taxes						
300 TOTAL EXPENSES AND TAXES						
TELEPHONE PLANT IN SERVICE						
310 General Support						
320 Central Office Equipment – Switch						
330 Central Office Equipment – Trans						
340 Cable and Wire						
350 Info Orig/Term Equipment						
360 Amortizable Assets						
370 Total Plant in Service						
ADJUSTMENTS TO TPIS						
380 Depreciation/Amortization Reserve						
390 Accum Deferred Income Tax						
400 Other Rate Base Adjustments						
RETURN DATA						
410 Average Rate Base						
420 Return						
430 Rate of Return						

Note 1: CCL support data contained on Lines 120 thru 140 is not applicable for companies that participate in the NECA pools.

FILING ENTITY: _____

RATE OF RETURN
HISTORICAL COST ANALYSIS SUMMARY

	PYCOS PERIOD 1/94 THRU 12/94	TOTAL COMPANY (A)	ADJUSTMENTS PART 64 (B)	ADJUSTMENTS OTHER (C)	TOTAL COMPANY SUBJECT TO SEPARATIONS (D)=A-B-C
	REVENUES				
100	Network Access	N/A	N/A	N/A	N/A
110	Uncollectibles	N/A	N/A	N/A	N/A
120	Common Line Support (Note 1)	N/A	N/A	N/A	N/A
130	Long Term	N/A	N/A	N/A	N/A
140	Transitional	N/A	N/A	N/A	N/A
150	Miscellaneous	N/A	N/A	N/A	N/A
160	Net Revenues	N/A	N/A	N/A	N/A
	EXPENSES				
170	Plant Specific	N/A	N/A	N/A	N/A
180	Plant Non-Specific excl Dep & Amor	N/A	N/A	N/A	N/A
190	Depreciation/Amortization				
200	Customer Operations	N/A	N/A	N/A	N/A
210	Access	N/A	N/A	N/A	N/A
220	Corporate Operations	N/A	N/A	N/A	N/A
230	AFUDC	N/A	N/A	N/A	N/A
240	Other Expenses and Adjustments	N/A	N/A	N/A	N/A
250	Taxes Other than FIT	N/A	N/A	N/A	N/A
260	Total Expenses and Other Taxes	N/A	N/A	N/A	N/A
	FIT ADJUSTMENTS				
270	Adjustments for FIT				
280	Amortized ITC				
290	Federal Income Taxes	N/A	N/A	N/A	N/A
300	TOTAL EXPENSES AND TAXES	N/A	N/A	N/A	N/A
	TELEPHONE PLANT IN SERVICE				
310	General Support				
320	Central Office Equipment - Switch				
330	Central Office Equipment - Trans				
340	Cable and Wire				
350	Info Orig/Term Equipment				
360	Amortizable Assets				
370	Total Plant in Service				
	ADJUSTMENTS TO TPIS				
380	Depreciation/Amortization Reserve				
390	Accum Deferred Income Tax				
400	Other Rate Base Adjustments	N/A	N/A	N/A	N/A
	RETURN DATA				
410	Average Rate Base	N/A	N/A	N/A	N/A
420	Return	N/A	N/A	N/A	N/A
430	Rate of Return	N/A	N/A	N/A	N/A

Note 1: CCL support data contained on Lines 120 thru 140 is not applicable for companies that participate in the NECA pools.

FILING ENTITY: _____

RATE OF RETURN
HISTORICAL COST ANALYSIS SUMMARY

	PYCOS PERIOD 1/94 THRU 12/94	INTERSTATE (E)	INTERSTATE BILLING & COLLECTION (F)	INTERSTATE INTEREXCHANGE (G)	ROR REGULATED IS ACCESS (H)=E–F–G
	REVENUES				
100	Network Access	N/A	N/A	N/A	
110	Uncollectibles	N/A	N/A	N/A	
120	Common Line Support (Note 1)	N/A	N/A	N/A	
130	Long Term	N/A	N/A	N/A	
140	Transitional	N/A	N/A	N/A	
150	Miscellaneous	N/A	N/A	N/A	
160	Net Revenues	N/A	N/A	N/A	
	EXPENSES				
170	Plant Specific				
180	Plant Non–Specific excl Dep & Amor				
190	Depreciation/Amortization				
200	Customer Operations				
210	Access		N/A		N/A
220	Corporate Operations				
230	AFUDC	N/A	N/A	N/A	
240	Other Expenses and Adjustments				
250	Taxes Other than FIT				
260	Total Expenses and Other Taxes				
	FIT ADJUSTMENTS				
270	Adjustments for FIT				
280	Amortized ITC				
290	Federal Income Taxes		N/A	N/A	
300	TOTAL EXPENSES AND TAXES		N/A	N/A	
	TELEPHONE PLANT IN SERVICE				
310	General Support				
320	Central Office Equipment – Switch				
330	Central Office Equipment – Trans				
340	Cable and Wire				
350	Info Orig/Term Equipment				
360	Amortizable Assets				
370	Total Plant in Service				
	ADJUSTMENTS TO TPIS				
380	Depreciation/Amortization Reserve				
390	Accum Deferred Income Tax				
400	Other Rate Base Adjustments				
	RETURN DATA				
410	Average Rate Base		N/A	N/A	
420	Return	N/A	N/A	N/A	
430	Rate of Return	N/A	N/A	N/A	

Note 1: CCL support data contained on Lines 120 thru 140 is not applicable for companies that participate in the NECA pools.

FILING ENTITY: _____

RATE OF RETURN
HISTORICAL COST ANALYSIS SUMMARY

	PYCOS PERIOD 1/94 THRU 12/94	COMMON LINE PAY PHONE (I)	COMMON LINE INSIDE WIRE (J)	COMMON LINE BFP (K)	TOTAL (L)=I+J+K
	REVENUES				
100	Network Access	N/A	N/A	N/A	
110	Uncollectibles	N/A	N/A	N/A	
120	Common Line Support (Note 1)	N/A	N/A	N/A	
130	Long Term	N/A	N/A	N/A	
140	Transitional	N/A	N/A	N/A	
150	Miscellaneous	N/A	N/A	N/A	
160	Net Revenues	N/A	N/A	N/A	
	EXPENSES				
170	Plant Specific				
180	Plant Non-Specific excl Dep & Amor				
190	Depreciation/Amortization				
200	Customer Operations				
210	Access	N/A	N/A	N/A	N/A
220	Corporate Operations				
230	AFUDC				
240	Other Expenses and Adjustments				
250	Taxes Other than FIT	N/A	N/A	N/A	
260	Total Expenses and Other Taxes	N/A	N/A	N/A	
	FIT ADJUSTMENTS				
270	Adjustments for FIT				
280	Amortized ITC				
290	Federal Income Taxes	N/A	N/A	N/A	
300	TOTAL EXPENSES AND TAXES	N/A	N/A	N/A	
	TELEPHONE PLANT IN SERVICE				
310	General Support				
320	Central Office Equipment - Switch				
330	Central Office Equipment - Trans				
340	Cable and Wire				
350	Info Orig/Term Equipment				
360	Amortizable Assets				
370	Total Plant in Service				
	ADJUSTMENTS TO TPIS				
380	Depreciation/Amortization Reserve				
390	Accum Deferred Income Tax				
400	Other Rate Base Adjustments				
	RETURN DATA				
410	Average Rate Base				
420	Return	N/A	N/A	N/A	
430	Rate of Return	N/A	N/A	N/A	

Note 1: CCL support data contained on Lines 120 thru 140 is not applicable for companies that participate in the NECA pools.

FILING ENTITY: _____

RATE OF RETURN
HISTORICAL COST ANALYSIS SUMMARY

	PYCOS PERIOD 1/94 THRU 12/94	SWITCHED TRAFFIC SENSITVIE: LOCAL SWITCHING (M)	EQUAL ACCESS (N)	LOCAL TRANSPORT (O)	INFORMATION (P)	TOTAL SWTCH TRFFC SNSTV (Q)=M+N+O+P	SPECIAL ACCESS (R)
	REVENUES						
100	Network Access						
110	Uncollectibles						
120	Common Line Support (Note 1)	N/A	N/A	N/A	N/A	N/A	N/A
130	Long Term	N/A	N/A	N/A	N/A	N/A	N/A
140	Transitional	N/A	N/A	N/A	N/A	N/A	N/A
150	Miscellaneous						
160	Net Revenues						
	EXPENSES						
170	Plant Specific						
180	Plant Non–Specific excl Dep & Amor						
190	Depreciation/Amortization						
200	Customer Operations						
210	Access	N/A	N/A	N/A	N/A	N/A	N/A
220	Corporate Operations						
230	AFUDC						
240	Other Expenses and Adjustments						
250	Taxes Other than FIT						
260	Total Expenses and Other Taxes						
	FIT ADJUSTMENTS						
270	Adjustments for FIT						
280	Amortized ITC						
290	Federal Income Taxes						
300	TOTAL EXPENSES AND TAXES						
	TELEPHONE PLANT IN SERVICE						
310	General Support						
320	Central Office Equipment – Switch						
330	Central Office Equipment – Trans						
340	Cable and Wire						
350	Info Orig/Term Equipment						
360	Amortizable Assets						
370	Total Plant in Service						
	ADJUSTMENTS TO TPIS						
380	Depreciation/Amortization Reserve						
390	Accum Deferred Income Tax						
400	Other Rate Base Adjustments						
	RETURN DATA						
410	Average Rate Base						
420	Return						
430	Rate of Return						

Note 1: CCL support data contained on Lines 120 thru 140 is not applicable for companies that participate in the NECA pools.

FILING ENTITY: _____

RORCOS–2
Page 1 of 3

RATE OF RETURN
ANALYSIS OF ACCESS ELEMENT COST DATA

	TEST YEAR FORECAST 7/95 THRU 6/96	COMMON LINE	TRAFFIC SENSITIVE SWITCHED	TRAFFIC SENSITIVE SPECIAL	OTHER INTERSTATE	TOTAL INTERSTATE	TOTAL COMPANY (SUB TO SEP)
	REVENUE REQUIREMENT						
100	Depreciation/Amortization						
105	Expense Less Depr & Amort						N/A
110	Taxes Less FIT				N/A	N/A	N/A
115	Return				N/A	N/A	N/A
120	FIT				N/A	N/A	N/A
125	Uncollectibles, IDC & Other Revenue Adjustments				N/A	N/A	N/A
130	Revenue Requirements				N/A	N/A	N/A
135	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
140	Telephone Plant in Service						
145	Rate Base Adjustments						N/A
150	Depreciation Reserves						
155	Accum Deferred Income Tax						
160	Average Rate Base						N/A
	HISTORICAL PERIOD 1/94 THRU 12/94						
	REVENUE REQUIREMENT						
200	Depreciation/Amortization						
205	Expense Less Depr & Amort						N/A
210	Taxes Less FIT						N/A
215	Return						N/A
220	FIT						N/A
225	Uncollectibles, IDC & Other Revenue Adjustments						N/A
230	Revenue Requirements						N/A
235	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
240	Telephone Plant in Service						
245	Rate Base Adjustments						N/A
250	Depreciation Reserves						
255	Accum Deferred Income Tax						
260	Average Rate Base						N/A

Note: Companies need to fill out this chart only for those periods which they previously forecast.

FILING ENTITY: _____

RORCOS-2
Page 2 of 3

RATE OF RETURN
ANALYSIS OF ACCESS ELEMENT COST DATA

	FORECAST PERIOD 7/94 THRU 6/95	COMMON LINE	TRAFFIC SENSITIVE SWITCHED	TRAFFIC SENSITIVE SPECIAL	OTHER INTERSTATE	TOTAL INTERSTATE	TOTAL COMPANY (SUB TO SEP)
	REVENUE REQUIREMENT						
300	Depreciation/Amortization						
305	Expense Less Depr & Amort						N/A
310	Taxes Less FIT				N/A	N/A	N/A
315	Return				N/A	N/A	N/A
320	FIT				N/A	N/A	N/A
325	Uncollectibles, IDC & Other Revenue Adjustments				N/A	N/A	N/A
330	Revenue Requirements				N/A	N/A	N/A
335	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
340	Telephone Plant in Service						
345	Rate Base Adjustments						N/A
350	Depreciation Reserves						
355	Accum Deferred Income Tax						
360	Average Rate Base						N/A
	HISTORICAL PERIOD 1/93 THRU 12/93						
	REVENUE REQUIREMENT						
400	Depreciation/Amortization						
405	Expense Less Depr & Amort						N/A
410	Taxes Less FIT						N/A
415	Return						N/A
420	FIT						N/A
425	Uncollectibles, IDC & Other Revenue Adjustments						N/A
430	Revenue Requirements						N/A
435	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
440	Telephone Plant in Service						
445	Rate Base Adjustments						N/A
450	Depreciation Reserves						
455	Accum Deferred Income Tax						
460	Average Rate Base						N/A

Note: Companies need to fill out this chart only for those periods which they previously forecast.

FILING ENTITY: _____

RORCOS–2
Page 3 of 3

RATE OF RETURN
ANALYSIS OF ACCESS ELEMENT COST DATA

	FORECAST PERIOD 7/93 THRU 6/94	COMMON LINE	TRAFFIC SENSITIVE SWITCHED	TRAFFIC SENSITIVE SPECIAL	OTHER INTERSTATE	TOTAL INTERSTATE	TOTAL COMPANY (SUB TO SEP)
	REVENUE REQUIREMENT						
500	Depreciation/Amortization						
505	Expense Less Depr & Amort						N/A
510	Taxes Less FIT				N/A	N/A	N/A
515	Return				N/A	N/A	N/A
520	FIT				N/A	N/A	N/A
525	Uncollectibles, IDC & Other Revenue Adjustments				N/A	N/A	N/A
530	Revenue Requirements				N/A	N/A	N/A
535	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
540	Telephone Plant in Service						
545	Rate Base Adjustments						N/A
550	Depreciation Reserves						
555	Accum Deferred Income Tax						
560	Average Rate Base						N/A
	HISTORICAL PERIOD 1/92 THRU 12/92						
	REVENUE REQUIREMENT						
600	Depreciation/Amortization						
605	Expense Less Depr & Amort						N/A
610	Taxes Less FIT						N/A
615	Return						N/A
620	FIT						N/A
625	Uncollectibles, IDC & Other Revenue Adjustments						N/A
630	Revenue Requirements						N/A
635	Access Service Revenues				N/A	N/A	N/A
	RATE BASE						
640	Telephone Plant in Service						
645	Rate Base Adjustments						N/A
650	Depreciation Reserves						
655	Accum Deferred Income Tax						
660	Average Rate Base						N/A

Note: Companies need to fill out this chart only for those periods which they previously forecast.

Filing Entity: _____

RATE OF RETURN ACCESS DEMAND
COMMON LINE

	Historic Period	PREMIUM CCL MOU ORIG (A)	PREMIUM CCL MOU TERM (B)	PREMIUM CCL MOU TOTAL (C)=A+B	NON-PREMIUM CCL MOU ORIG (D)	NON-PREMIUM CCL MOU TERM (E)	NON-PREMIUM CCL MOU TOTAL (F)=D+E
100	1Q92						
110	2Q92						
120	3Q92						
130	4Q92						
140	1Q93						
150	2Q93						
160	3Q93						
170	4Q93						
180	1Q94						
190	2Q94						
200	3Q94						
210	4Q94						
220	PYCOS PERIOD (1/94 THRU 12/94)						
230	PROSPECTIVE PERIOD (7/95 thru 6/96)						

6227

Filing Entity: _____

RATE OF RETURN ACCESS DEMAND
COMMON LINE

	Historic Period	TOTAL CCL MOU ORIG (G)=A+D	TOTAL CCL MOU TERM (H)=B+E	TOTAL (I)=C+F	TOTAL CHARGEABLE CCL MOU ORIG (J)=A+(D*.45)	TOTAL CHARGEABLE CCL MOU TERM (K)=B+(E*.45)
100	1Q92					
110	2Q92					
120	3Q92					
130	4Q92					
140	1Q93					
150	2Q93					
160	3Q93					
170	4Q93					
180	1Q94					
190	2Q94					
200	3Q94					
210	4Q94					
220	PYCOS PERIOD (1/94 THRU 12/94)					
230	PROSPECTIVE PERIOD (7/95 thru 6/96)					

6228

Filing Entity: _____

RATE OF RETURN ACCESS DEMAND
TRAFFIC SENSITIVE

	Historic Period	LOCAL SWITCHING PREMIUM (A)	LOCAL SWITCHING NON – PREMIUM (B)	TOTAL (C) = A + B	LOCAL SWITCHING TOTAL CHARGEABLE (D) = (A) + (B*.45)	TANDEM SWITCHING TOTAL * (E)	TANDEM SWITCHING TRANSPORT ** (F)
300	1Q92						
310	2Q92						
320	3Q92						
330	4Q92						
340	1Q93						
350	2Q93						
360	3Q93						
370	4Q93						
380	1Q94						
390	2Q94						
400	3Q94						
410	4Q94						
420	PYCOS PERIOD (1/94 THRU 12/94)						
430	PROSPECTIVE PERIOD (7/95 thru 6/96)						

* These are the transport minutes, discussed in Part 69.111 (f) & (g), referencing only those MOU's switched at a company tandem.
** These are the transport minutes, discussed in Part 69.111 (a) – (e), referencing MOU's that are carried over trunk groups other than those dedicated to a single interexchange carrier (i.e. TST or "Common").

Note: Local Switching minutes are the appropriate billable units for the interconnection charge.

6229

Filing Entity: _____

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Page 1 of 1

RATE OF RETURN
SPECIAL ACCESS DEMAND COMPARISON

	HISTORICAL 1/94 thru 12/94			PROSPECTIVE 7/95 thru 6/96		
	CHANNEL TERMINATION	CIRCUITS	INTEROFFICE MILES	CHANNEL TERMINATION	CIRCUITS	INTEROFFICE MILES
	(A)	(B)	(C)	(D)	(E)	(F)
100 Metallic	_____	_____	_____	_____	_____	_____
110 Telegraph	_____	_____	_____	_____	_____	_____
120 Voice Grade (Excl. WATS)	_____	_____	_____	_____	_____	_____
130 WATS	_____	_____	_____	_____	_____	_____
140 Audio Program (Full time)	_____	_____	_____	_____	_____	_____
150 High Capacity	_____	_____	_____	_____	_____	_____

NOTE: This chart should be populated with annualized demand.

6230

Filing Entity: _____

RATE OF RETURN
COMMON LINE DEMAND AND REVENUES

	HISTORICAL 1/94 thru 12/94		PROSPECTIVE 7/95 thru 6/96	
	REVENUES (A)	MOU OR LINES (B)	REVENUES (C)	MOU OR LINES (D)
100 Total End User Charges	_____	_____	_____	_____
110 Residence	_____	_____	_____	_____
120 Single Line Business	_____	_____	_____	_____
130 Multi Line Business	_____	_____	_____	_____
140 Special Access Surcharge	_____	_____	_____	_____
150 Carrier Common Line	_____	_____	_____	_____
160 Total Common Line Revenues	_____	N/A	_____	N/A

Note : This chart is not applicable for companies that participate in the NECA Common Line pools.

Filing Entity: _____

RATE OF RETURN ACCESS DEMAND
MINUTES OF USE DEMAND COMPARISON

		COMMON LINE MOU (A)	TRAFFIC SENSITIVE MOU (B)
100 PROSPECTIVE 7/95 THRU 6/96			
110 PYCOS PERIOD 1/94 THRU 12/94	(1)		
120 PROSPECTIVE 7/94 THRU 6/95	(2)		
130 HISTORICAL PERIOD 1/94 THRU 12/94	(1)		
140 PROSPECTIVE 7/93 THRU 6/94	(2)		
150 HISTORICAL PERIOD 1/93 THRU 12/93	(1)		
160 PROSPECTIVE 7/92 THRU 6/93	(2)		
170 HISTORICAL PERIOD 1/92 THRU 12/92	(1)		

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NOTES: (1) Actual Operating Statistics
(2) From 1994 TRP RORDMD – 4

NOTES: Companies filing their initial filing are not required to complete this form.
Companies participating in the NECA Carrier Common Line pool should populate Column A with zero(0).

Filing Entity: _____

RATE OF RETURN
LOCAL TRANSPORT DEMAND COMPARISON

	HISTORICAL 1/94 THRU 12/94			PROSPECTIVE 7/95 THRU 6/96		
	VG	DS1	DS3	VG	DS1	DS3
	(A)	(B)	(C)	(D)	(E)	(F)
100 Entrance Facility						
110 Direct Trunked Transport						

Note : Quantities are annualized and Percent Interstate Usage Factor (PIU) has been applied.

Filing Entity: _____

RATE OF RETURN
SWITCHED AND SPECIAL ACCESS RATE ANALYSIS

		7/1/94 Rate	Currently Effective Rate	Proposed 7/1/95 Rate	Proposed To 7/1/94 % Change	Proposed To Current % Change
	A. SWITCHED ACCESS RATES	(A)	(B)	(C)	D=(C–A)/A*100	E=(C–B)/B*100
100	Premium CCL Terminating Rate, $ Per Minute	_____	_____	_____	_____	_____
110	Non–Premium Terminating CCL Rate $ Per Minute	_____	_____	_____	_____	_____
120	Premium Switching Rate, $ Per Minute	_____	_____	_____	_____	_____
130	Non–Premium Switching Rate, $ Per Minute	_____	_____	_____	_____	_____
140	Equal Access per _____	_____	_____	_____	_____	_____
	B. END USER ACCESS RATES					
150	Multi Line Business	_____	_____	_____	_____	_____
160	Residence and Single Line Bus.	_____	_____	_____	_____	_____

6234

Filing Entity:

Filing Entity: _____

RATE OF RETURN
SWITCHED AND SPECIAL ACCESS RATE ANALYSIS

		7/1/94 Rate	Currently Effective Rate	Proposed 7/1/95 Rate	Proposed To 7/1/94 % Change	Proposed To Current % Change
	C. LOCAL TRANSPORT RATES	(A)	(B)	(C)	D=(C–A)/A*100	E=(C–B)/B*100
170	Premium Local Transport Rate, $ Per Minute (Avg Mileage)					
180	Non–Premium Local Transport Rate, $ Per Minute (Avg Mileage)					
190	DS1 Entrance Facility Rate, $ Per Circuit					
200	DS1 Direct Trunk Rate, $ Per Circuit (Avg Mileage)					
210	Tandem Switched Transport, $ Per Minute (Avg Mileage)					
220	Tandem Switching Rate, $ Per TND Minute					
230	Premium Interconnection Charge, $ Per Minute					
240	Non–Prem Interconnection Charge, $ Per Minute					
250	Non–recurring Charge, Per Trunk or Trunks Activated					
	D. SPECIAL ACCESS RATES					
260	2–Wire Voice Grade, $ Per Circuit(Avg Mileage)					
270	4–Wire Voice Grade, $ Per Circuit(Avg Mileage)					

Note: Lines 170 and 180 only applicable to companies under old transport structure (non–LTR).

Filing Entity: _____

RATE OF RETURN
ANNUALIZED ACCESS PRICEOUT COMPARISONS

	A. SWITCHED ACCESS RATES	Revenue at 7/2/94 Rate (A)	Revenue at Currently Effective Rate (B)	Change (C)=B–A	Revenue at Proposed 7/1/95 Rate (D)	Change (E)=D–B
100	Multi Line Business					
110	Residence and Single Line Business					
120	Carrier Common Line					
130	Special Access					
140	Local Switching					
150	Equal Access					
160	Information					
170	Local Transport					

Note: NECA CCL pool participants need not fill in Line 120.

Filing Entity: _____

RATE OF RETURN
COSA FOR WHICH RATES ARE AVERAGED

COSA (NOTE)	MULTI LINE BUSINESS (A)	RESIDENCE & SINGLE LINE BUS (B)	CARRIER COMMON LINE (C)
100			
110			
120			
130			
140			
150			
160			
170			
180			
190			
200			
210			
220			
230			

Note: Companies should list in the appropriate column all COSAs for which rates are averaged or pooled.

Filing Entity: _____

RATE OF RETURN
COSA FOR WHICH RATES ARE AVERAGED

COSA (NOTE)	SWITCHING (D)	LOCAL TRANSPORT (E)	INFORMATION (F)	EQUAL ACCESS (G)	SPECIAL ACCESS (H)
100 _____					
110 _____					
120 _____					
130 _____					
140 _____					
150 _____					
160 _____					
170 _____					
180 _____					
190 _____					
200 _____					
210 _____					
220 _____					
230 _____					

Note: Companies should list in the appropriate column all COSAs for which rates are averaged or pooled.

Filing Entity _____

RORERN – 1
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ANNUALIZED RATE OF RETURN COMPARISON

		Preliminary 1993/94 FCC Monitoring Period * (A)	Preliminary 1994 Period (B)	Prospective 7/95 – 6/96 (C)
100	Total Interstate Access			
110	Carrier Common Line			
120	Special Access			
130	Local Switching			
140	Information			
150	Local Transport			
160	Total TS – Switched			

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* Preliminary 1993/94 Monitoring Period ROR is taken directly from the FCC492, filed March 30, 1994.

Filing Entity:_____

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Page 1 of 2

ANNUALIZED TEST PERIOD 7/95 THRU 6/96 ACCESS REVENUE REQUIREMENTS
DEMAND AND RATE RECONCILIATION – SWITCHED ACCESS

		RATES			RATE MAKING DEMAND				
		MIN/MSG	MIN MILE	LINE OR TRK	MIN/MSG	MIN MILE	LINE OR TRK	REVENUE	REVENUE REQUIREMENTS
		(A)	(B)	(C)	(D)	(E)	(F)	(G)=(A*D)+(B*E)+(C*F)	(I-I)
	COMMON LINE								
100	Multi Line Business EUCL	N/A	N/A	_____	N/A	N/A	_____	_____	N/A
110	Single Line Business EUCL	N/A	N/A	_____	N/A	N/A	_____	_____	N/A
120	Residence EUCL	N/A	N/A	_____	N/A	N/A	_____	_____	N/A
130	Special Access Surcharge	N/A	N/A	_____	N/A	N/A	_____	_____	N/A
140	Terminating COL Premium	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
150	Terminating COL NonPrem	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
160	Originating COL Premium	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
170	Originating COL NonPrem	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
180	Common Line – Total	N/A	N/A	N/A	N/A	N/A	N/A	_____	_____
	INFORMATION								
190	Directory Assistance	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
200	White Page Surcharge Prem	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
210	White Page Surcharge NPrem	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
220	Other Information	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
230	Information – Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A	_____
	LOCAL SWITCHING								
240	Premium	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
250	Non-Premium	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
260	Equal Access	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
270	Switching – Total	N/A	N/A	N/A	N/A	N/A	N/A	N/A	_____
	LOCAL TRANSPORT								
280	Premium LTT Termination	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
290	NonPremium LTT Termination	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
300	Premium LTF Facility	N/A	_____	N/A	N/A	_____	N/A	_____	N/A
310	NonPremium LTF Facility	N/A	_____	N/A	N/A	_____	N/A	_____	N/A
320	Tandem Switching	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
330	TST Termination	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
340	TST Facility	N/A	_____	N/A	N/A	_____	N/A	_____	N/A
350	Premium Interconnection	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
360	NonPrem Interconnection	_____	N/A	N/A	_____	N/A	N/A	_____	N/A
370	Installation NRC per Trunk	N/A	N/A	_____	N/A	N/A	_____	_____	_____

NOTE: Carrier and End User Common Line data is required from only those companies that file their own rates.

6240

Filing Entity:

Filing Entity:_____

ANNUALIZED TEST PERIOD 7/95 THRU 6/96 ACCESS REVENUE REQUIREMENTS
DEMAND AND RATE RECONCILIATION – SWITCHED ACCESS

		RATES			RATE MAKING DEMAND				
		TERMS	CIRCUITS	MILES	TERMS	CIRCUITS	MILES	REVENUE	REVENUE REQUIREMENTS
		(A)	(B)	(C)	(D)	(E)	(F)	(G)=(A*D)+(B*E)+(C*F)	(H)
	LOCAL TRANSPORT – Continued								
380	DS3 Entrance Facility	N/A		N/A	N/A		N/A		
390	DS3 Direct Termination		N/A	N/A		N/A	N/A		
400	DS3 Direct Facility	N/A	N/A		N/A	N/A			
410	DS1 Entrance Facility	N/A		N/A	N/A		N/A		
420	DS1 Direct Termination		N/A	N/A		N/A	N/A		
430	DS1 Direct Facility	N/A	N/A		N/A	N/A			
440	VG Entrance Facility	N/A		N/A	N/A		N/A		
450	VG Direct Termination		N/A	N/A		N/A	N/A		
460	VG Direct Facility	N/A	N/A		N/A	N/A			
470	Other Transport	N/A	N/A	N/A	N/A	N/A	N/A		
480	Local Transport – Total	N/A	N/A	N/A	N/A	N/A	N/A		
	SPECIAL – VOICE GRADE								
490	2-Wire Channel Term	N/A		N/A	N/A		N/A		
500	4-Wire Channel Term	N/A		N/A	N/A		N/A		
510	Channel Mileage Term		N/A	N/A		N/A	N/A		
520	Channel Mileage Facil	N/A	N/A		N/A	N/A			
530	Non-Recurring (Note 1)	N/A		N/A	N/A		N/A		
	SPECIAL HIGH CAPACITY								
540	HI-CAP Channel Term	N/A		N/A	N/A		N/A		
550	Channel Mileage Term		N/A	N/A		N/A	N/A		
560	Channel Mileage Facil	N/A	N/A		N/A	N/A			
570	Non-Recurring (Note 1)	N/A		N/A	N/A		N/A		
580	Special Access – Total	N/A	N/A	N/A	N/A	N/A	N/A		

NOTE 1: A "Composite" Special NRC must be used if the installation rates vary among the services.

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Filing Entity: _____

RATE OF RETURN TEST PERIOD REVENUES

		Total Network Access (A)=B+C+D	Recurring w/o ICB (B)	Non–Recurring w/o ICB (C)	ICB (D)
100	Carrier Common Line				
110	Special Access				
120	Local Switching				
130	Equal Access				
140	Information				
150	Local Transport				
160	Total TS – Switched				

Before the
Federal Communications Commission FCC 95-94
Washington, D.C. 20554

In the Matters of	)	
	)	
Safeguards to Improve the	)	CC Docket No. 93-6
Administration of the Interstate	)	RM 7736
Access Tariff and Revenue	)	
Distribution Processes	)	
	)	
Consideration of NECA's	)	AAD 95-34
Incentive Compensation Plan	)	

REPORT AND ORDER AND ORDER TO SHOW CAUSE

Adopted: March 3, 1995; Released: March 8, 1995

By the Commission:

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I. INTRODUCTION

1. The National Exchange Carrier Association, Inc. ("NECA") is an association of local exchange carriers ("LECs") established in 1984, at the direction of the Federal Communications Commission, to administer important Commission programs.[1] These programs now include the common line ("CL") and traffic sensitive pools,[2] the universal service fund, the lifeline assistance program, and the long term support program.[3] Our rules require LECs to report revenue, cost, and demand data to NECA so that NECA can administer these programs in accordance with our requirements.[4]

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[1] MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241, 333-34 (1983)(MTS and WATS Third Report and Order).

[2] These pools allow participating LECs to share the risks of providing interstate services by charging uniform rates for each pool. These rates are based on the pool participants' collective costs and demand, and are contained in tariffs that NECA files for the pool participants based on data that the participants provide to NECA. The LECs collect CL and traffic sensitive revenue directly from their customers. The participants report this revenue along with their CL and traffic sensitive investment, expenses, and revenue to NECA, which distributes the revenue by first paying its own administrative costs, then reimbursing the participants for their CL and traffic sensitive expenses, and then distributing any residue among the participating LECs in proportion to their average net investment.

[3] The universal service fund, lifeline assistance, and long term support programs share a common purpose of promoting affordable telephone service throughout the nation. The universal service fund helps carriers operating in high cost areas maintain low intrastate service rates in those areas. See 47 C.F.R. §§69.116, 69.603(c). The lifeline assistance program helps low income persons pay for telephone service. See 47 C.F.R. §§69.117, 69.603(d). The long term support program requires LECs that do not participate in the CL pool to contribute part of their revenue to that pool. The contributions let NECA maintain a nationwide average CL rate equivalent to the rate that would result if all LECs participated in the CL pool. See 47 C.F.R. §§69.2(y), 69.612.

[4] 47 C.F.R. §§69.116(c), 69.117(c), 69.605(a).

2. In 1989 and 1990, the Common Carrier Bureau ("Bureau") audited certain data that the Bell Operating Companies ("BOCs") had reported to NECA's CL pool during late 1988 and early 1989. That audit disclosed that several NECA directors appeared to have participated in an attempt to influence improperly the CL pool earnings for 1988 by inducing certain large LECs to report data to NECA that were inconsistent with our accounting, separations, and access charge rules. In a November 9, 1990 letter to NECA,[5] we expressed concern regarding the directors' apparent misconduct. We required NECA to hire an independent auditor to recommend safeguards to prevent manipulation of NECA's processes.[6] NECA hired Ernst & Young, which filed its report on this audit with the Commission on December 9, 1991.[7] This report acknowledged NECA's improvement since the Bureau audit and recommended additional measures to improve the interstate access tariff and revenue distribution processes further.[8] NECA has implemented many of the recommendations that required no Commission action and has asked us to act when Commission action was required.[9]

3. In the Notice of Proposed Rule Making ("Notice") in this Docket,[10] we proposed to adopt those of the independent auditor's recommendations that we found warranted Commission action. Our proposals focused on the composition and operation of NECA's Board, on the relationship between NECA and this Commission, and on methods for strengthening NECA's internal operations. Sixteen parties filed comments on the Notice, and five parties replied.[11]

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[5] Letter from Donna R. Searcy, Secretary, FCC, to Lawrence C. Ware, Chairman of the Board of Directors, NECA, 5 FCC Rcd 7183 (1990) (November 9 Letter).

[6] Our letter also required NECA to retain an independent auditor to review other data that the BOCs had reported to NECA for 1989 and 1990. In companion Orders, we address the independent auditor's findings in this audit. See, e.g., Ameritech Operating Companies, Order to Show Cause, FCC 95-72 (released March 3, 1995).

[7] Ernst & Young, Review and Recommended Pool Safeguards, AAD 91-24 (filed Dec. 9, 1991)(Safeguards Report).

[8] The improvements included a new emphasis on rule compliance, changes to NECA's bylaws that make NECA's Board deliberations more systematic, and better methods for ensuring that the data LECs submit to NECA comply with Commission requirements. We discuss these improvements in subsequent portions of this Order.

[9] For instance, after the independent auditor recommended that the NECA Board include directors from outside the LEC industry, NECA petitioned the Commission for a rule change to add two outside director positions to its Board.

[10] Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, Notice of Proposed Rulemaking, 8 FCC Rcd 1503 (1993) (Notice).

[11] Appendix A lists the commenters and replies, as well as the short names this Order uses to identify the parties.

4. In this Report and Order, we adopt many of our proposals. To bring independent views to NECA's deliberations and to help ensure that NECA complies with Commission requirements, we change the composition of NECA's Board. Effective January 1, 1996, NECA's Board will consist of five directors from outside the LEC industry, two directors representing the BOCs, two directors representing other LECs having annual operating revenues in excess of $40 million, and six directors representing LECs having annual operating revenues of less than $40 million. These directors will serve one-year terms, but, if they seek reelection, must face contested elections at least every three years. We require that each NECA Board committee include at least one outside director, and we eliminate restrictions on the membership of NECA's CL and traffic sensitive committees.

5. We reiterate that, in preparing interstate access tariff filings and distributing interstate revenue, NECA must correct any data that it reasonably believes do not comply with our rules. To help ensure that NECA receives complete and accurate data from LECs, we require that responsible LEC officers or employees certify data submissions to NECA. We order NECA to show cause why we should not require it to amend its incentive compensation plan for its officers and employees to eliminate any incentives that may reward rule violations. We also require NECA to report annually to this Commission on the results of its cost study review process, but we decline to require LECs that do not participate in NECA's pools to obtain independent audits of their costs studies. We also decline to require NECA to provide the Commission with on-line access to NECA data bases at this time.

6. In taking these actions, we emphasize that we have no wish to superintend NECA's day-to-day operations, and we do not believe that our actions intrude upon NECA's managerial discretion. NECA, however, is an organization established at the Commission's direction, whose structure and principal functions are specified by Commission rules.[12] We believe that we must ensure that NECA is discharging its responsibilities under our rules if we are to discharge our own responsibility to ensure the reasonableness of interstate telephone rates.

II. COMPOSITION OF NECA'S BOARD

A. Number of Outside Directors and Overall Composition

1. Background

7. Section 69.602 of our rules[13] states that NECA's Board shall consist of

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[12] See 47 C.F.R. §§69.601-69.612.

[13] 47 C.F.R. §69.602.

fifteen directors, of whom three are selected by and represent the BOCs, three are selected by and represent other LECs having annual operating revenues in excess of $40 million, and nine are selected by and represent LECs having annual operating revenues of less than $40 million. These directors are referred to as subset I, subset II, and subset III directors, respectively, or collectively as industry directors. They are elected for one-year terms that begin on the first of January following their election. Since January 1, 1992, two additional directors from outside the LEC industry have served on NECA's Board pursuant to waivers granted by the Bureau.[14] NECA's members have elected these outside directors.

8. Prior to the completion of the Safeguards Report, NECA filed a petition for rulemaking to amend Section 69.602 to add two directors from outside the telephone industry to NECA's Board. In the Notice, we tentatively concluded that we should amend Section 69.602 to add at least two permanent outside director positions to NECA's Board.[15] We also requested comment on whether we should change that Board's composition and, in particular, on whether a Board composed of three outside directors, two subset I directors, two subset II directors, and six subset III directors would improve NECA's administrative processes.[16]

2. Comments

9. Many commenters support the permanent addition of outside directors to NECA's Board.[17] These commenters state that outside directors would bring a different perspective to Board deliberations,[18] force the LEC Board members to clarify their own positions in the process of educating the outside directors,[19] help assure

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[14] Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, 9 FCC Rcd 2042 (Com. Car. Bur. 1994)(1994 Waiver Order); Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, 8 FCC Rcd 7580 (Com. Car. Bur. 1993); Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, 7 FCC Rcd 4401 (Com. Car. Bur. 1992); Expansion of the NECA Board to Include Two Directors from Outside the Telephone Industry, 6 FCC Rcd 5403 (Com. Car. Bur. 1991).

[15] Notice, 8 FCC Rcd at 1505, para. 9.

[16] Id. at 1505, para. 11.

[17] ALLTEL Comments at 2; Ameritech Comments at 2; Bell Atlantic Comments at 1; CHA Comments at 6; GCI Comments at 2; ICORE Comments at 4-5; NARUC Comments at 4-5; NECA Comments at 10-11 & NECA Reply Comments at 2; NTCA Comments at 7, at 21 & NTCA Reply Comments at 2; OPASTCO Comments at 3; SWBT Comments at 2; USTA Comments at 3.

[18] ALLTEL Comments at 2; Bell Atlantic Comments at 1; CHA Comments at 6; NARUC Comments at 4; NECA Comments at 11; NTCA Comments at 7; SWBT Comments at 2.

[19] Ameritech Comments at 2.

that NECA's members comply with Commission's rules,[20] and increase public confidence in NECA's processes and overall management.[21] While most of these commenters maintain that we should add two outside directors, GCI asserts that three or more outside directors would reduce each outside director's workload on NECA committees.[22]

10. Ameritech maintains that the Commission should reduce NECA's Board from seventeen to eleven members. Ameritech suggests that a Board this size should have two outside directors, two subset I directors, two subset II directors, and five subset III directors. Ameritech contends that this configuration would preserve the voting balance among the three subsets and would permit obvious cost savings. Ameritech states that an eleven-member Board would be large enough because the Board's workload has decreased, participation in NECA's pools has declined, and the amount of money the Board must administer has decreased.[23]

11. Other commenters argue that the Commission should not reduce the number of subset I, subset II, or subset III directors.[24] NECA and NTCA dispute Ameritech's premise that the time and effort needed to resolve pooling issues has decreased.[25] NECA explains that the resolution of many complex issues, such as those raised by signalling system 7 implementation, require extensive review by NECA's Board.[26] NTCA maintains that a smaller Board would not reduce NECA's costs. NTCA also states that each Board member contributes a significant perspective to the Board and that fewer directors would decrease the Board's collective knowledge.[27] Staurulakis argues that the Commission should not dilute the voting power and representation of the subset III companies.[28] ICORE states that displacing existing directors to add more than two outside directors would create unnecessary

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[20] ALLTEL Comments at 2; CHA Comments at 6.

[21] NARUC Comments at 4-5.

[22] GCI Comments at 2.

[23] Ameritech Comments at 2-3.

[24] ALLTEL Comments at 1-2; Bell Atlantic Comments at 1; CHA Comments at 6; ICORE Comments at 5; JSI Comments at 2-3; OPASTCO Comments at 3-4; NECA Comments at 8, 11-13; NTCA Comments at 8; SWBT Comments at 2; USTA Comments at 3; UTA Comments at 1-2.

[25] NECA Reply Comments at 5; NTCA Comments at 3-4.

[26] NECA Reply Comments at 5.

[27] NTCA Reply Comments at 3-4.

[28] Staurulakis Comments at 2.

churn within NECA's Board and would make it less effective.[29]

3. Discussion

12. NECA has improved its administrative processes considerably since we reprimanded it, in our November 9 Letter, for the apparent failures of several NECA directors to discharge their responsibilities under Commission rules and of the Board as a whole to display sufficient vigilance with regard to those directors' actions. We believe that this improvement stemmed, in large part, from NECA's constructive response to that letter. As the independent auditor found, NECA's employees "have a strong and sincere commitment to the integrity of NECA and to restoring the public's perception of that integrity."[30] This commitment has manifested itself in NECA's voluntary implementation of many of the independent auditor's recommendations.

13. We also believe that the presence of outside directors on NECA's Board since January 1, 1992 has contributed to NECA's improved administrative processes. Those directors have brought independent perspectives to NECA's deliberations and reduced any tendency there may have been for NECA not to comply with Commission requirements. The permanent addition of outside directors to NECA's Board should preserve these gains.

14. The only questions on this record are whether we should add more than two outside directors, as GCI suggests, and reduce the number of subset I, subset II, or subset III directors, as Ameritech urges. In this regard, we find that two outside director positions are insufficient to ensure that the outside directors are able to contribute independent views on each issue NECA faces, many of which are highly technical. We also find that the present composition of two outside directors serving pursuant to waiver and fifteen industry directors may leave the outside directors at a severe disadvantage in NECA Board deliberations. Additional outside director positions would appear to be a useful, and perhaps essential, measure for ensuring that NECA always gives rule compliance the highest priority.

15. Based on the understanding we have acquired of NECA's processes in this proceeding and in other proceedings regarding NECA,[31] we believe that five outside directors would avoid problems similar to those that led to the independent audit. While no single Board composition is perfect, we also conclude that five outside directors, two subset I directors, two subset II directors, and six subset III directors would create a balanced Board in which the outside directors, the subset I and II

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[29] ICORE Comments at 5.

[30] Safeguards Report, supra at 26.

[31] These other proceedings include those discussed in note 6, supra.

directors, and the subset III directors would exert roughly equivalent influence in Board deliberations.[32] In addition to ensuring the effectiveness of the outside directors as a group, this composition will reduce the Board to the fifteen members provided for in Section 69.602 of our rules while preserving the present proportional relationship among the various industry groups. Therefore, we amend Section 69.602 of the rules to require that Board configuration. To give NECA reasonable time to prepare for this change, we make it effective as of January 1, 1996. Pending that effective date, NECA's Board will include two outside directors pursuant to the Bureau's 1994 Waiver Order.[33]

B. Eligibility Criteria for Outside Directors

1. Background

16. Our rules do not set eligibility criteria for NECA directors. The directors elected pursuant to Section 69.602 have been employees of NECA member companies. In its petition for rulemaking, NECA proposed to make current or former officers or employees of NECA or any of its members, and anyone related to such persons, ineligible to become outside directors, and to require that outside directors have no business relationships or other interests that could interfere with their judgment. In the Notice, we proposed to adopt these criteria. We stated that they would exclude current federal and state regulators as well as former officers and employees of NECA and its member LECs from becoming NECA outside directors.[34]

2. Comments

17. Several commenters support the proposed criteria. These parties contend that those criteria would prevent outside directors from having conflicts of interest from business or other sources. They assert that outside directors who meet the criteria will be independent and objective.[35] NECA argues, however, that the proposed criteria are too restrictive because they would make relatives of LEC employees ineligible to become outside directors. In NECA's view, individuals with family relationships to current or former officers or employees of NECA or NECA members should be eligible to hold such positions, unless the relationships could interfere with

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[32] Because most subset I and II companies do not participate in NECA's CL and traffic sensitive pools, these companies have similar interests.

[33] See 1994 Waiver Order, 9 FCC Rcd at 2042, para. 6.

[34] Notice, 8 FCC Rcd at 1505, para. 14.

[35] ALLTEL Comments at 2-3; Ameritech Comments at 3; Bell Atlantic Comments at 1; GCI Comments at 2; ICORE Comments at 5-6; NTCA Comments at 8; USTA Comments at 4.

their judgment.[36] SWBT supports this position.[37]

3. Discussion

18. We adopt the proposed eligibility criteria identified in the Notice, subject to minor revisions. The criteria we adopt should provide a large pool of qualified candidates able to exercise independent judgment as outside directors. We continue to believe that current federal and state regulators should not be eligible, because they might find it impossible to act as NECA directors without compromising confidential information obtained in course of their official employment and without encountering substantial conflicts of interest.[38] In addition, we believe that current and former officers and employees of NECA and its members may be too partial to LEC interests, or could be too vulnerable to perceptions of partiality, to function as independent outside directors. In contrast, many relatives of such officers and employees should be able to exercise independent judgment as NECA outside directors. We believe, however, that spouses of current LEC officers and employees have a financial interest that could interfere with the exercise of independent judgment as outside directors.[39] Subject to these exceptions, we agree with NECA that relatives of LEC officers and employees should be able to serve as outside directors, if they meet the eligibility criteria, and we do not exclude all relatives from eligibility.

C. Selection of Outside Directors

1. Background

19. In its petition for rulemaking, NECA described the procedures it intended to use to select outside directors. NECA proposed that the election committee of its Board would screen outside director candidates after soliciting nominees from the business, professional, financial, and academic communities. NECA also proposed to list those nominees its Board deemed qualified on the ballot for NECA's annual election and to have its members select outside directors from among the listed candidates.[40] In the Notice, we stated that these procedures appeared reasonable, but we expressed concern that they might not provide NECA's members with an opportunity to choose from among a range of candidates for outside directors. Therefore, we invited

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[36] NECA Comments at 14.

[37] SWBT Comments at 3.

[38] Notice, 8 FCC Rcd at 1505, para. 14.

[39] NECA's screening of outside director candidates should identify financial and other interests that could interfere with the exercise of independent judgment as an outside director.

[40] NECA Petition at 4-5.

comment on whether we should require NECA's Board to nominate multiple candidates for each outside director position.[41]

2. Comments

20. Several commenters support the procedures NECA proposed for selecting outside director candidates. These commenters argue that we should leave the selection of outside directors to NECA's discretion.[42] NECA contends that once its members elect an outside director, that person should be encouraged to run for reelection unopposed to ensure continuity on the NECA Board. NECA maintains that the high eligibility standards NECA proposed would make it difficult to attract multiple candidates for each outside director election and that it is unusual to require directors to run annually against multiple candidates. Nevertheless, NECA promises to hold elections with multiple candidates periodically and in any year in which an incumbent outside director chooses not to run for reelection.[43] NECA states that contested outside director elections every three years or when an unforeseen vacancy occurs would assure a balanced Board that combines experience and continuity with ample turnover.[44]

21. Other commenters favor requiring NECA to nominate a specified number of candidates for each outside director position. GCI argues that there should be at least two candidates for each outside director position and that finding a minimum of six candidates should not be difficult.[45] Ameritech maintains that no more than three candidates should be nominated for each outside director position.[46] SWBT agrees that the outside director elections should be contested, but only if the Commission creates sufficiently long terms or allows for outside directors to run unopposed for some shorter term.[47] ICORE contends that requiring NECA to list multiple candidates for each outside director election would eliminate a normal Board prerogative and would reduce NECA's flexibility to respond to unforeseen circumstances.[48]

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[41] Notice, 8 FCC Rcd at 1506, para. 17.

[42] ICORE Comments at 6-7; NECA Comments at 15-17; NTCA Comments at 9; USTA Comments at 4.

[43] NECA Comments at 15-17; NECA Reply at 7.

[44] Letter from Robert E. Lloyd to Bill Caton, Acting Secretary, Federal Communications Commission, Attachment at 5, CC Docket No. 93-6 (Aug. 31, 1994)(August 1994 Ex Parte Letter).

[45] GCI Comments at 2.

[46] Ameritech Comments at 3.

[47] SWBT Comments at 4.

[48] ICORE Comments at 6.

3. Discussion

22. Although we agree that the procedures for selecting outside directors should generally be left to NECA's discretion, we believe that we have a responsibility to ensure that those procedures are reasonable. In the Notice, we stated that the procedures NECA proposed appeared reasonable, but we expressed concern that they might not assure NECA's members an opportunity to choose among a range of candidates for each outside director position.[49] In response to this concern, NECA now represents that it will hold contested elections for each outside director's seat every three years and in years in which an incumbent outside director does not choose to run for reelection.[50] We find this approach reasonable and we will incorporate it into our rules.

D. Terms of Office

1. Background

23. Section 69.602 of our rules sets one-year terms for subset I, II, and III directors, and the outside directors elected pursuant to Bureau waivers have also served one-year terms. In the Notice, we invited comment on whether we should set two-year terms for all NECA directors. We also invited comment on whether to adopt staggered terms for any directors serving two-year terms.

2. Comments

24. In its comments, NECA states that subset I and subset II companies rotate directors' seats among themselves, with each director generally serving three one-year terms. NECA also states that its subset III members have an open nomination process under which incumbents that wish to run again appear on the annual ballot along with any qualified subset III representative that obtains 25 authorized signatures.[51]

25. Several commenters argue that this process is working well and should not be changed.[52] ICORE maintains that rules governing term limits and overlapping director positions would reduce the Board's flexibility to manage what should be its own internal processes.[53] USTA states that NECA should be able to control its own

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[49] Notice, 8 FCC Rcd at 1506, para. 17.

[50] NECA Comments at 15-17; NECA Reply at 7; Ex Parte Letter, Attachment at 5.

[51] NECA Comments at 16.

[52] E.g., Bell Atlantic Comments at 2; ICORE Comments at 6-7; NECA Comments at 8.

[53] ICORE Comments at 7.

operations and governance.[54] NECA contends that its current nomination and election criteria for the industry directors make staggered terms unnecessary.[55] NTCA argues that there are no overriding regulatory concerns requiring the Commission to dictate the length of directors' terms and that the Commission should allow NECA to adopt two-year, staggered terms for all director positions.

26. Other commenters support alternative processes. GCI argues that outside directors should serve for a minimum of two years and have staggered terms, but that the industry directors should continue to serve one-year terms.[56] Ameritech states that the Commission should consider limiting directors to one two-year term, with one additional term being granted those elected Chairman or Vice Chairman of NECA's Board.[57] SWBT suggests that, for continuity's sake, the Commission should permit outside directors' terms to be longer than two years or allow those directors to be reelected annually without opposition.[58]

3. Discussion

27. In this Order, we permanently add five seats for outside directors to the NECA Board and permit outside directors to run unopposed for reelection to second and third terms. We believe that this structure makes two-year terms for outside directors unnecessary. The purpose behind such terms would be to enhance the outside directors' ability to ensure that NECA initiatives are carried through to completion in accordance with Commission requirements.[59] Two-year terms, however, would have only a marginal effect on that ability and would reduce the system's flexibility. In contrast, having five outside directors, who are eligible for reelection to additional terms, should provide a degree of continuity among the outside directors and help them assure against rule violations. Although newly elected outside directors may not be familiar with NECA initiatives, we expect that, in most years, one or more outside directors would be reelected. Any holdover outside directors would be able to help incoming outside directors understand those initiatives. In these circumstances, we decline to specify two-year terms for outside director positions.

28. We also believe that two-year terms are not needed to ensure the

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[54] USTA Comments at 3.

[55] NECA Comments at 17.

[56] GCI Comments at 2.

[57] Ameritech Comments at 4.

[58] SWBT Comments at 4-5.

[59] See Notice, 8 FCC Rcd at 1506, para. 19.

effectiveness of the industry directors. Because those directors may continue to be LEC employees, each incoming director should have sufficient familiarity with NECA initiatives to make an immediate contribution. Therefore, we retain one-year terms for industry director positions.

E. Voting Privileges on Committees

1. Background

29. The NECA Board has eleven committees: executive; CL; traffic sensitive; audit; average schedule; billing and collection; budget and finance; communications; compensation; election; and lifeline and universal service. Section 69.602(e) of our rules restricts voting membership on the CL and traffic sensitive committees to directors from companies that participate in the associated pools. After the independent auditor recommended that these committees be expanded to include outside directors as well as directors from non-pooling LECs,[60] the Bureau waived Section 69.602(e) and authorized the outside directors to serve as voting members of all NECA Board committees, beginning with the January 1, 1992 through December 31, 1992 term.[61] The Bureau deferred to this proceeding consideration of NECA's proposal to allow directors from non-pooling LECs to vote on the CL and traffic sensitive committees.[62]

30. In the Notice, we proposed to require that each NECA Board committee include at least one outside director, and that both the CL and traffic sensitive committees include at least one director from non-pooling LECs. We stated that having outside directors serve as voting members of NECA committees would increase the committees' accountability and help the Board as a whole monitor the committees' actions. We also stated that directors from non-pooling LECs would broaden the perspectives within the CL and traffic sensitive committees.[63]

2. Comments

31. The commenters generally support our proposals to include at least one

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[60] See Safeguards Report, supra at 28-29.

[61] E.g., Expansion of Voting Membership on Voluntary Access Tariff Committees, 7 FCC Rcd 2050, para. 6 (1991) (Voting Membership Order).

[62] Id. at 2050-51, para. 7.

[63] Notice, 8 FCC Rcd at 1506, para. 22.

outside director as a voting member of each NECA committee[64] and at least one director from non-pooling LECs as a voting member of both the CL and traffic sensitive committees.[65] Ameritech argues that an outside director and a director from a non-pooling LEC should be included on all NECA committees that deal with NECA's regulated operations.[66] GCI maintains that the CL and traffic sensitive committees should include at least two outside directors.[67] SWBT states that including representatives from non-pooling LECs on the CL and traffic sensitive committees would go far toward maintaining equitable representation within NECA.[68] ICORE states that in lieu of amending Section 69.602(e) as proposed, the Commission could eliminate that rule to give the NECA Board the freedom to make committee assignments on its own.[69]

3. Discussion

32. As we stated in the Notice, much of NECA's work is done in its committees.[70] We believe that each NECA committee has an important role to play in ensuring that NECA complies with Commission requirements. Including at least one outside director as a voting member of each of these committees should help ensure that NECA fulfills its responsibilities to the Commission. For instance, although NECA's billing and collection committee deals only with activities that are classified as nonregulated for federal accounting purposes,[71] that committee is a primary vehicle for assuring that NECA's billing and collection operations are restricted to activities that have been expressly authorized by Commission rule or order.[72] Therefore, we amend Section 69.602 to require that NECA include at least one outside director on each committee of its Board. NECA, of course, remains free to include one or more

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[64] E.g., Bell Atlantic Comments at 2, n.7; ICORE Comments at 7; NECA Comments at 18; NTCA Comments at 9.

[65] E.g., ICORE Comments at 7; NECA Comments at 18; NTCA Comments at 9; SWBT Comments at 5.

[66] Ameritech Comments at 4.

[67] GCI Comments at 3.

[68] SWBT Comments at 5.

[69] ICORE Comments at 7.

[70] Notice, 8 FCC Rcd at 1506, para. 22.

[71] Of the remaining committees, four (CL, traffic sensitive, average schedule, and lifeline and universal service) address activities that are classified as regulated for federal accounting purposes, and six (executive, audit, budget and finance, communications, compensation, and election) support both regulated and nonregulated activities.

[72] See 47 C.F.R. §69.603(a).

additional outside directors on each of its committees.

33. We also find that, as we stated in the Notice,[73] including at least one director from non-pooling LECs as a voting member of both the CL and traffic sensitive committees would broaden the perspectives of those committees and assure a fairer representation among the committees' members. Therefore, we amend Section 69.602 to require that the CL and traffic sensitive committees include at least such director.

F. Prohibition of "Ad Hoc" Committees

34. In the Safeguards Report, the independent auditor recommended that the Board prohibit ad hoc committees, because unlike "standing committees," such committees did not maintain official records of committee deliberations and decisions. In response to this recommendation, NECA amended its bylaws to require that all Board committees be appointed by Board resolution, keep formal minutes, and report all their actions to the full Board. In the Notice, we found that these amendments should help assure that NECA administers the interstate access tariff and revenue distribution processes in accordance with our rules. We observed, however, that NECA's bylaws permit NECA committees to establish subcommittees, without making clear whether the subcommittees also must be appointed by committee resolution, keep formal minutes, and report all their actions to a full committee. We proposed to require NECA to amend its bylaws to specify these procedures.[74] In response to this proposal, NECA amended its bylaws to require that each of its subcommittees be created through committee resolution, keep formal minutes, and report all its actions to the committee that created it.[75] In view of this amendment, we take no further action on this matter.

G. Other Matters

35. Commenters suggest that we should impose term limits on NECA directors,[76] open NECA Board meetings to interested parties,[77] and require NECA to file the minutes of its Board meetings with the Commission and make those minutes

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[73] Notice, 8 FCC Rcd at 1506, para. 22.

[74] Id. at 1507, paras. 23-24.

[75] NECA Comments at 19.

[76] Ameritech Comments at 3.

[77] GCI comments at 3.

available to interested parties.[78] In light of the actions we take herein, we see no need to act on these suggestions at this time.

III. NECA'S OPERATIONS

A. NECA's Overall Responsibilities

1. Background

36. In the Notice, we stated our expectation that NECA will make reasonable efforts to interpret our rules correctly and to implement those interpretations. We observed that, in the course of its operations, NECA receives much data that LECs must assemble to comply with our accounting, separations, and access charge rules. We recognized that NECA cannot review each LEC submission in minute detail and that NECA has adopted review standards, methods, and procedures designed to detect LEC noncompliance. We stated that if, as a result of its review, NECA concludes that LEC data do not comply with our rules, NECA must correct revenue requirement and revenue distribution computations that include the noncompliant data.[79]

2. Comments

37. Several commenters dispute our statement that NECA must correct LEC-submitted data in its revenue requirement and revenue distribution computations. Bell Atlantic and SWBT contend that our statement must be rejected because it delegates regulatory authority to NECA, in violation of both our purpose in creating NECA and LEC rights to have their rule interpretations reviewed by the Commission.[80] ICORE argues that allowing NECA to correct data that LECs submit assumes without adequate foundation that NECA's staff is more knowledgeable than highly skilled, well-trained, and conscientious LEC personnel and the consulting firms upon whom the LECs rely to develop their submissions to NECA.[81] NTCA asserts that NECA, NECA pool participants, and other LECs should all be allowed to weigh the advantages and disadvantages of different interpretations of Commission rules and implement the

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[78] Id.

[79] Notice, 8 FCC Rcd at 1507, paras. 25-26.

[80] Bell Atlantic Comments at 3, citing MTS and WATS Market Structure, Memorandum Opinion and Order, CC Docket No. 78-72, Phase I, 97 FCC 2d 682, 754-55, para. 180 (1983)(MTS and WATS Reconsideration Order); SWBT Comments at 5-6.

[81] ICORE Comments at 8-9.

ones that most benefit their own collective interests.[82] GCI, however, contends NECA must exercise its own independent interpretative judgment and implement that interpretation.[83]

3. Discussion

38. We reiterate our requirement that, in preparing interstate access tariff filings and distributing interstate revenue, NECA must correct any data that it reasonably believes do not comply with our rules. The arguments against that requirement assume a role for NECA different from that which the Commission has prescribed for NECA ever since its creation. Prior to divestiture, AT&T had acted as the tariff filing agent for the BOCs and other LECs, and had distributed revenues among those LECs using its "Division of Revenues" and settlements processes. When AT&T agreed to divest the BOCs, the Commission recognized that it would be inappropriate for AT&T to continue these roles in a post-divestiture environment. The Commission proposed a LEC association to develop interstate access tariffs and administer interstate access revenue pools. The Commission recognized that this association would require:

> [B]oth a governing board to establish policy and a staff to implement that policy and to perform the day-to-day administration of access charges. The access plan we ultimately adopt would, of course, determine the nature of these policies and administrative tasks. The governing board might, in appropriate circumstances, also review staff actions challenged by individual members.[84]

39. Thereafter, the Commission mandated the association's creation, and stated that it would "prepare and justify the [access charge] tariffs on behalf of" pool participants and "compute the distributions each participant is entitled to receive from the pool."[85] The Commission required that the tariffed charges "be computed, assessed, and collected and [that] revenues from such charges...be distributed as provided" in the access charge rules.[86] These requirements remain in effect today.[87]

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[82] NTCA Comments at 18.

[83] GCI Comments at 4.

[84] MTS and WATS Market Structure, Fourth Supplemental Notice of Inquiry and Proposed Rulemaking, 90 FCC 2d 135, 150, para. 52 (1982)(internal citation omitted).

[85] Id. at 333, para. 339.

[86] See MTS and WATS Order, 97 FCC 2d at 344 (adopting Section 69.1(b) of the Commission's rules).

40. This history makes clear that when the Commission created NECA, it contemplated that NECA would implement the access charge system in accordance with Commission rules. To prepare access charge tariffs, NECA must use data that complies with our accounting, cost allocation, jurisdictional separations, and access charge rules. To justify its tariff filings, NECA must believe in good faith that the data in the filings comply with those rules. To distribute access charge revenues, NECA also must use data that comply with those rules.

41. Some commenters would have us depart from this structure so that LECs that disagree with NECA's rule interpretations could have their own interpretations incorporated into NECA's tariff filings or receive revenue based on those interpretations. This we refuse to do for several reasons. First, it would impose unnecessary burdens on the tariffing process. NECA's CL tariff filings, for instance, reflect data from over 800 LECs. Allowing those filings to reflect multiple interpretations of Commission rules would needlessly complicate our review and interested parties' review processes.

42. Second, the data each LEC reports to NECA affect not only its own earnings, but also the earnings of other carriers. For instance, because NECA distributes CL revenue based on each pool participant's CL costs,[88] each increase in an individual participant's reported costs reduces each other participant's CL revenue, at least temporarily. It would be unfair to those participants' that implement NECA's rule interpretations to allow more aggressive participants to increase their revenue at the group's expense.

43. Third, although LECs reduce the amounts they receive from NECA when they reduce their reported CL costs, experience has shown that such reductions could be used to disguise improper concerted action. To ensure that this does not happen, we decline to allow NECA to depart from its own good faith interpretations of our rules without Commission approval.

44. We reject the argument that requiring NECA to correct inaccurate data improperly delegates regulatory authority to NECA. We retain our full authority to review NECA's tariff filings in accordance with constitutional and statutory standards. LECs that disagree with NECA's interpretations of our rules are free to present their arguments to the Commission, either in comments on those filings or petitions for declaratory rulings.[89] Absent Commission action to the contrary, NECA must

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[87] See 47 C.F.R. §69.1(b).

[88] See supra, n.2.

[89] For this reason, the above structure does not constitute an improper delegation of governmental power to NECA. See MTS and WATS Reconsideration Order, 97 FCC 2d at 754-55, para. 180.

implement its rule interpretations.

B. On-line Access to NECA Data Bases

1. Background

45. NECA maintains computer-based files of data that LECs provide pursuant to our rules. These files include cost and demand data that NECA uses to prepare interstate access tariffs and to distribute revenues received under those tariffs. These files constitute a relatively complete source of company-specific data on NECA pool participants. NECA computer-based files also contain extensive information that pool non-participants submit to NECA to enable it to administer the universal service fund, lifeline assistance, and long term support programs.[90]

46. In the Notice, we proposed that NECA provide us with on-line, dial-up access to these computer-based files to enhance our ability to regulate the activities and programs administered by NECA. We acknowledged, however, that before such access could be provided, safeguards would be necessary to guarantee data base integrity and prevent unauthorized access.[91]

2. Comments

47. NECA and a majority of the LECs strongly oppose granting the Commission access to NECA's files.[92] They believe that data access is unnecessary because the Commission can currently request and obtain data at any time.[93] These commenters assert that the computer data is preliminary information and therefore unreliable and confusing.[94] They also assert that the Commission does not require non-pooling LECs to provide on-line access to their data bases, that requiring on-line access to NECA's data bases would provide incentives for small LECs to leave the pools, and that such a requirement would be inconsistent with the Commission's efforts to minimize

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[90] We describe these programs in footnote 3, supra.

[91] Notice, 8 FCC Rcd at 1508, para. 32.

[92] NECA Comments at 25-27; ALLTEL Comments at 5-6; Bell Atlantic Comments at 3; NTCA Comments at 19-20, NECA Reply Comments at 4; SWBT Comments at 8; USTA Comments at 4-5; and VTA Comments at 1-2.

[93] NECA Comments at 26; Bell Atlantic Comments at 3; SWBT at 8, SWBT Reply Comments at 4; NTCA Comments at 19-20, NTCA Reply Comments at 4; USTA comments at 4.

[94] SWBT Comments at 8, SWBT Reply at 4; NECA Comments at 26; ALLTEL Comments at 5-6; Bell Atlantic Comments at 3; USTA Comments at 2, 5; NTCA Comments at 19-20.

burdens on small telephone companies.[95]

48. On the other hand, AT&T, ICORE, GCI, JSI and Ameritech support the Commission's acquiring on-line access to NECA's data base, subject to proper safeguards. These commenters believe that having data access would aid the overall process. They contend that such access would enable the Commission to monitor NECA's activities more closely and assert that NECA's data will be more accurate at earlier stages, as opposed to 24 months later.[96] They emphasize that data access would enable the Commission to obtain data at any time, which would eliminate delays spent waiting to receive requested information from NECA.[97]

49. In addition, AT&T suggests that not only should the Commission be allowed data access but that the interexchange carriers also should have on-line access to selected NECA data files, subject to proper authorization and safeguards.[98] AT&T believes that allowing carriers access would increase data accuracy because carriers have a strong incentive to scrutinize such information.[99] AT&T also asserts that data access would allow individuals to conduct an analysis of the changing cost and revenue requirement base, to develop multi-year trend analyses, and to provide valuable insight into the cost growth characteristics of individual LECs and of the universal service fund.[100]

50. GCI also believes that the Commission should grant all interested parties on-line access to NECA's data files.[101] GCI asserts that data access would help both federal and state regulatory commissions in their evaluation of LECs' costs and separations studies, and help ensure that LECs comply with the Commission's rules.[102]

51. SWBT opposes the recommendations of AT&T and GCI, and states that in an era in which distinctions between interexchange carriers and LECs are blurring, unlimited data access would provide interexchange carriers with a significant and

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[95] NECA Comments at 26; ALLTEL Comments at 5-6; VTA Comments at 1; USTA Comments at 2.

[96] NECA procedures allow the LECs 24 months to reconcile and correct data submitted to the CL pool.

[97] AT&T Comments at 2-4; ICORE Comments at 10; GCI Comments at 4; and JSI Comments at 5; Ameritech Comments at 5.

[98] AT&T Comments at 2-4.

[99] Id. at 2-3.

[100] Id. at 3.

[101] GCI Comments at 4.

[102] Id. at 4-5.

unwarranted competitive advantage.[103] NTCA states that it is contrary to common business practices for business customers such as the interexchange carriers, in this instance, to have direct access to the internal business matters of a company.[104]

3. Discussion

52. In the past, we have routinely obtained much data from NECA through data requests. We see no compelling need to depart from that approach at this time. If circumstances change and on-line access becomes necessary, we can address these problems in a separate proceeding.

53. In addition, before on-line access becomes feasible, a number of technical questions must be resolved. First, many of the data bases NECA maintains are working files that evolve, during NECA's review processes, from preliminary data to NECA's final figures. At this time, we see no advantage flowing from routine, on-line access to data before NECA completes its review processes. In addition, the data are aggregated in different ways and, we believe, maintained in different formats. If we had a particular data requirement, we would need the guidance of the NECA staff to determine which NECA data files might satisfy that requirement, thus, negating in many instances the possibility of quick access to data. Finally, if we were to obtain on-line access, we would have to establish safeguards to guarantee data base integrity and prevent unauthorized access. The record in this proceeding does not make clear what those safeguards might be.

C. Certification of Data Submitted to NECA

1. Background

54. As indicated previously,[105] NECA has a responsibility to take reasonable precautions to ensure that the data it uses in preparing interstate access tariff filings and distributing interstate revenue comply with our rules. To discharge this responsibility, NECA attempts to gather, analyze and disseminate information on our rules to its membership. These efforts are designed to give NECA's members sufficient time to reflect rule changes in the data submitted to NECA. NECA attempts to detect instances of noncompliance through various data review processes. In the Notice, we stated that it might help NECA detect rule violations if responsible LEC officers or employees were to certify whether data submitted to NECA comply with our rules. We invited comment on whether we should require such a certification and

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[103] SWBT Reply Comments at 5.

[104] NTCA Reply Comments at 4-5.

[105] See supra, Part III(A).

on how we might implement it for data submitted only in computer format.[106]

2. Comments

55. NECA states that it currently requires LEC officers or general managers to certify all final cost study data, all USF data reports, and specific data submissions for which it deems certification necessary.[107] NECA argues that these requirements balance the administrative burdens on the LECs with the need to assure LEC compliance with the Commission's rules. [108] JSI and VTA oppose our establishing a certification requirement, because they believe that it is unnecessary. These commenters contend that a requirement that LECs certify all data submitted to NECA would be unworkable because most information LECs provide to NECA for tariffs involves estimates that cannot be certified. Consequently, these commenters contend that a certification requirement would not help detect instances of noncompliance.[109] GCI, however, maintains that a certification requirement would further the Commission's goal of ensuring that LEC data submissions comply with Commission rules.[110] SWBT contends that such a requirement would place the responsibility for rule compliance where it properly belongs--on the carrier--rather than on NECA.[111]

3. Discussion

56. After considering the comments, we require that data LECs submit to NECA shall be accompanied by a certification signed by the LEC officer or employee having overall responsibility for the preparation of the data. This certification may be based on information provided to the signing officer or employee by the employees who prepared the data. In the certification, the signing officer or employee shall state that the submission is accurate, complete, and consistent with the Commission's rules. We believe that this certification will improve the quality, completeness, and accuracy of the data provided NECA by underscoring the individual accountability of those responsible for providing the data to NECA. We also believe that this certification will impose no additional burden on LECs, because they already have an obligation to give NECA accurate and complete data that are consistent with our rules.

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[106] Notice, 8 FCC Rcd at 1508, para. 37.

[107] NECA Comments at 27-28; Letter from Robert E. Lloyd, NECA, to Bill Caton, Acting Secretary, FCC, Attachment at 7 (Oct. 18, 1994)(October Ex Parte Letter).

[108] NECA Reply Comments at 18.

[109] JSI Comments at 5-6; VTA Comments at 1-2.

[110] GCI Comments at 5.

[111] SWBT Comments at 8.

57. We recognize, however, that the certifying officer or employee cannot, in every instance, have personal knowledge of the completeness and accuracy of the data submission, and of the rule interpretations it reflects. At times, that person must rely on the representations of those who prepare the various component parts of the overall data submission. Therefore, our certification requirement recognizes that the certification may be based on the representations of other individuals who helped prepare the data submission.

D. Cost Study Review Process

1. Background

58. Our rules require LECs to use factors, such as "average cost per working loop," to divide their investments and expenses between regulated and nonregulated activities, between the interstate and state jurisdictions, and among the access elements.[112] To calculate these factors, LECs perform periodic studies that are referred to as cost studies. Among its responsibilities, NECA reviews the cost studies prepared by participants in the CL and traffic sensitive pools. At the time of the independent audit, the NECA staff checked each of these studies for data entry and methodological errors, and ran the study through NECA's jurisdictional cost allocation program to see if NECA's and the LEC's results agreed. NECA also attempted to identify the "riskiest" cost studies for further review.[113] This review was generally "streamlined,"[114] but NECA conducted a limited number of on-site, cost study reviews each year.[115]

59. The independent auditor recommended that NECA redesign its process to provide greater assurance of LEC compliance with Commission rules. The independent auditor stated that NECA should do more selective and effective field reviews. According to the independent auditor, these on-site reviews should focus on compliance in areas where the audited LEC has demonstrated problems before or where the nature of the LEC's operations suggests "certain risk factors."[116] In

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[112] See 47 C.F.R. §36.154(a).

[113] NECA considered 14 factors in assessing risk. These factors included, inter alia, the size of the LEC's CL revenue requirement and whether the LEC's cost studies had received further review in the two preceding years. See Safeguards Report at 18.

[114] This review, which NECA applied to about half the LECs in the CL pool each year, compares the data used and the results of the LEC's cost studies for two successive periods, calculates the absolute and percentage changes between the two periods, and calculates the potential effect of the changes on CL pool earnings. Id. at 16-17.

[115] Id. at 19-21.

[116] Id. at 33. The independent auditor does not identify what these risk factors should be. Id.

discussions with the Commission staff prior to release of the Notice, NECA indicated that it had refined and focused its cost study review efforts in response to the independent auditor's recommendations.

60. In the Notice, we invited NECA to state in its comments how it had improved its cost study review process and suggested that, after we reviewed this information, we might make additional proposals for strengthening NECA's cost study review process. We also invited comment on whether we should require NECA to report annually on the results of that process.[117]

2. Comments

61. In its comments, NECA states that it has made substantial efforts to improve its cost study review process since the independent audit began. According to NECA, these efforts include the application of its "streamlined" cost study validation procedures to all cost companies in 1992. NECA indicates that it has developed an additional review process that focuses on areas where there has been a rule change, a dispute regarding the Commission's requirements, or a history of noncompliance. NECA also states that it updates its cost study review process quarterly and that it is improving its procedures for measuring the adequacy of that process.[118]

62. Ameritech, ICORE, and VTA support a Commission requirement that NECA submit its cost study review results annually.[119] Ameritech and ICORE argue that reviewing those results would help the Commission measure NECA's effectiveness in securing compliance with the rules and keep the Commission informed of some issues raised in the administration of the pooling process.[120] VTA contends that the report should summarize review findings and not provide company-specific information.[121]

3. Discussion

63. Cost studies are important tools for determining the proper allocation of LEC costs. Using these studies, LECs apportion investment and expense between regulated and nonregulated activities, separate costs between the interstate and state jurisdictions, and apportion costs among interstate access elements. Cost studies

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[117] Notice, 8 FCC Rcd at 1509, paras. 44.

[118] NECA Comments at 20-21.

[119] Ameritech Comments at 5; ICORE Comments at 13; VTA Comments at 3.

[120] Ameritech Comments at 5; ICORE Comments at 13.

[121] VTA Comments at 3.

involve significant data collection, analysis, reporting, and auditing. The larger carriers have the expertise and other resources to perform these studies efficiently. On the other hand, smaller carriers may lack the expertise or other resources needed to perform these studies for themselves. In some cases, they may be forced to hire outside consultants to perform them.

64. We believe that NECA's cost study review process is critical to ensuring that the pooling LECs' cost studies are reliable and consistent with Commission rules. In response to our invitation, NECA has described how it has improved its process in response to the Safeguards Report.[122] We agree that these improvements strengthen the process. We believe that the process should continue to improve, and we believe that NECA now is committed to that end. So that we may stay informed of further changes to that process, we require NECA to submit an annual report on that process. This report will help us assess NECA's effectiveness in securing compliance with our rules and keep us informed of any issues NECA faces. The report will be due February 1 of each calendar year.

65. This report shall describe NECA's cost study review process for the preceding calendar year, highlighting any changes to the process made since the preceding report and explaining why the change was made, as well as the results of that process. The report shall also contain the following information for each cost study revision made or recommended by NECA that would change the respective carrier's annual CL or traffic sensitive revenue requirement by ten percent or more: the carrier's name; a detailed description of the revision; the dollar amount of the revisions; the impact of the revision on the carrier's CL and traffic sensitive revenue requirements; and the carrier's total annual CL and traffic sensitive revenue requirements. We do not intend to classify this report as routinely available information. We will address any confidentiality issues related to information appearing in this report, if we receive a request for its disclosure.

E. Independent Audits for Non-pooling LECs

1. Background

66. Under our rules, LECs may leave NECA's CL and traffic sensitive pools, and may file their own interstate tariffs with the Commission.[123] In the Safeguards Report, the independent auditor recommended that the same cost study review standards, methods, and procedures apply to all LECs, regardless of pool participation.[124]

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[122] See supra, para. 65.

[123] See, e.g., 47 C.F.R. §69.3.

[124] Notice, 8 FCC Rcd at 1509.

According to the independent auditor, applying more stringent requirements to pool participants than to non-participants may drive LECs from the NECA pools. The independent auditor suggested that, if the Commission lacks the resources to perform cost studies for all the LECs, it could "outsource" to NECA the responsibility for reviewing the cost studies of small LECs that have elected not to participate in the pools.

67. In the Notice, we determined that we could not properly delegate to NECA the responsibility for reviewing LEC cost studies that do not affect NECA's revenue requirement or revenue distribution computations.[125] We expressed concern, however, that LECs may leave NECA's pools to avoid NECA's review process. Therefore, we invited comment on whether we should require a sample of rate of return LECs that file their own tariffs to retain independent auditors to report annually on the sufficiency of those LECs' cost studies. We also invited comment suggesting alternative measures that might achieve comparable benefits at lower cost.[126]

2. Comments

68. Many commenters oppose the Commission's requiring a randomly selected set of LECs that file their own tariffs to retain independent auditors to report annually on the sufficiency of the LECs' cost studies.[127] They assert that, because the LECs' filings are already scrutinized, independent audits are unnecessary. They explain that the tariffs non-pooling LECs file are based on company-specific costs and documentation, are available for review by the Commission, and may be challenged by interexchange carriers.[128] JSI, ICORE, and USTA argue that an independent audit requirement for non-pooling LECs would penalize small companies and would be inconsistent with the Commission's policy of reducing regulatory burdens.[129] Anchorage and JSI maintain that hiring an independent auditor to conduct the study would be expensive and might force small companies to remain in the pools.[130]

69. Ameritech recommends that, instead of requiring the non-pooling LECs to

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[125] Id.

[126] Id.

[127] Ameritech Comments at 5; Anchorage Comments at 1; Bell Atlantic Comments at 5; ICORE Comments at 13; JSI Comments at 7-8; USTA Comments at 6-7; VTA Comments at 3.

[128] Ameritech Comments at 5; Anchorage Comments at 1; Bell Atlantic Comments at 5; ICORE Comments at 13; JSI Comments at 7-8; USTA Comments at 6-7; VTA Comments at 3.

[129] JSI Comments at 8; ICORE Comments at 13-14; USTA Comments at 6.

[130] Anchorage Comments at 1; JSI Comments at 8.

submit reports prepared by independent auditors, the Commission require small LECs to submit information similar to that which the Automated Report Management Information Systems ("ARMIS") requires.[131] NTCA opposes such a requirement. NTCA contends that it would be extremely burdensome for small LECs to compile ARMIS data and that the Commission has already correctly concluded that it should not require small LECs to file such data.[132]

3. Discussion

70. We impose no further obligations at this time on carriers that file their own tariffs. A requirement to obtain independent audits would have the greatest effect on smaller LECs. To meet that requirement, they would have to hire accounting firms at a substantial expense when compared to the interstate revenues they receive. To recover that expense, the smaller LECs would have to raise their rates substantially. Pool participants bear no similar cost burden, although they are subject to the NECA cost study review process. Instead, NECA recovers the costs of that process through its CL rates. Those costs have only a marginal impact on those rates.

71. We also do not require data submissions from smaller LECs similar to those larger LECs make for ARMIS. We decline to require such submissions at this time, again because of the expense this would impose on small LECs.

IV. INCENTIVE COMPENSATION

A. Background

72. The incentive compensation plan NECA introduced in 1987 granted annual bonuses to certain NECA officers and employees for achieving performance objectives, including earning--and exceeding--NECA's authorized rates of return for the CL and traffic sensitive pools. Although NECA revised this plan in 1991, on average seven percent of NECA's executive compensation continued to depend on CL and traffic sensitive pool earnings. The independent auditor recommended that NECA reduce this type of compensation to avoid potential conflicts of interest for NECA officers and employees and, instead, create performance incentives for achieving compliance with the Commission rules.[133]

73. In the Notice, we observed that NECA's incentive compensation plan may

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[131] Ameritech Comments at 6.

[132] NTCA Reply Comments at 5.

[133] Safeguards Report, supra at 10-11, 32.

reward rule violations, because it may offer inducements to make reported data conform with forecast data, regardless of the forecast's accuracy. We stated that incentive compensation plans having this effect are unacceptable. The precise details of NECA's plan remained unknown when we adopted our Notice, however. We, therefore, proposed to require NECA to submit the plan for our review. We also proposed, pending that review, to prohibit any incentive payments based on the rates of return earned by the CL and traffic sensitive pools. Finally, we invited comment on how NECA might assess the effectiveness of its incentive compensation plan in securing LEC compliance with our rules.[134]

B. Comments

74. GCI and ICORE believe NECA should submit its incentive compensation plan for Commission review.[135] GCI argues that the plan should not conflict with NECA's obligations and that interested persons should be allowed to comment on it.[136] ICORE maintains that incentives based on achieved pool returns could reward manipulation and may be inappropriate, but that it would be proper to reward increased productivity or substantial reductions in NECA's operating budget.[137]

75. Other commenters contend that Commission review of NECA's incentive compensation plan would be intrusive.[138] After completion of the comment period, NECA filed its current incentive compensation plan with the Commission and placed that plan on the public record.[139] NECA states that this plan differs substantially from the plan the independent auditor reviewed and contains no improper incentives. NECA also states that the plan no longer rewards NECA officers or employees when the CL and traffic sensitive pools exceed the authorized interstate rate of return and that the incentives for achieving that rate of return are no greater than those for other performance objectives.[140]

76. The overall plan is now comprised of a short-term plan in which all NECA

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[134] Notice, 8 FCC Rcd at 1509, paras. 40-41.

[135] GCI Comments at 5; ICORE Comments at 12.

[136] GCI Comments at 5.

[137] ICORE Comments at 12.

[138] Bell Atlantic Comments at 5; SWBT Comments at 9; NTCA Reply Comments at 5-6; VTA Comments at 2; NECA Comments at 32.

[139] Letter from Robert E. Lloyd, NECA, to Bill Caton, Acting Secretary, FCC, CC Docket No. 93-6 (Sept. 21, 1994) (September Ex Parte Letter).

[140] NECA Comments at 28-32; NECA Reply at 18-21.

officers and employees participate and a long-term plan in which only NECA's president and four vice presidents participate. The compensation committee of NECA's Board administers both of these plans. The short-term plan rewards annual performance in relation to five goals: providing service to member companies; filing accurate tariffs and having high earnings; acting as a resource to members; achieving operational efficiency; and improving program quality. This plan specifies criteria for measuring NECA's performance in relation to these goals.[141] The plan also permits discretionary awards of up to 25 percent of the total potential incentive award, but specifies no criteria for such awards.[142]

77. NECA's compensation committee computes annual bonuses under the short-term plan by grading NECA's overall performance in relation to the specified criteria and adding any "discretionary" points the committee deems proper. This produces a single NECA-wide score. Each individual's bonus equals the product of this score and the individual's "incentive standard," which is a percentage of that individual's annual salary. According to NECA, the short-term plan is targeted to produce average annual bonuses ranging from 2.5 percent of annual salary for the lowest paid employees and 40 percent for NECA's president. The maximum short-term bonuses under this plan range are 50 percent higher than this average.[143]

78. The long-term plan rewards NECA's president and vice presidents for achieving qualitative and quantitative goals during three-year performance cycles. These goals include maintaining and enhancing the pooling and revenue distribution process, providing value-added services to NECA's members, and increasing corporate efficiency. The plan specifies criteria for measuring performance in relation to these goals. This plan also has a discretionary component equal to 20 percent of the potential long-term bonuses. The only criterion specified in the plan for discretionary awards is a statement that they are to be awarded for "[o]ther significant long term accomplishments."[144]

79. At the end of each three-year cycle, the compensation committee computes bonuses for the five executives under this plan using a system similar to that under the short-term plan. These bonuses are paid during the three years following the end of each cycle. The annual bonuses under this plan can range from

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[141] For instance, one criterion under providing service to member companies is "[o]verall member satisfaction with NECA as measured by survey." September Ex Parte Letter, Attachment 3 (NECA 1994 Corporate Weights) at 2.

[142] Id., Attachments 2 (NECA's 1994 Compensation Plan) & 3 (NECA 1994 Corporate Weights).

[143] Id., Attachments 2 & 3.

[144] Id., Attachment 4 (Long Term Incentive Plan, Performance Goals and Measures, 1992-1994 Performance Cycle) at 3.

6.25 percent of annual salary for NECA's vice presidents to 12.25 percent of annual salary for its president.[145]

C. Discussion

80. The Bureau audit that gave rise to this rulemaking disclosed an apparent attempt to influence improperly the CL pool earnings for 1988. One effect of this apparent misconduct may have been that the bonuses paid under NECA's then current incentive compensation plan were larger than they otherwise would have been. Although NECA's current plan differs considerably from that prior plan, we remain concerned that the plan may contain improper incentives that could encourage or reward rule violations. To give each NECA officer and employee every incentive to prevent rule violations, we order NECA to show cause why it should not be required to amend that plan to eliminate any improper incentives.

81. In the Notice, we highlighted pool earnings as a possible improper incentive.[146] NECA defends its continued reliance on those earnings to determine incentive compensation on two grounds. First, NECA argues that since the Bureau audit, it has reduced the percentage of incentive compensation dependent on pool earnings from 50 percent to 25 percent.[147] However, of the incentive compensation payable under NECA's short-term plan, 25 percent is based on pool earnings and 25 percent is discretionary.[148] In addition, of the incentive compensation available under the long-term plan, 40 percent is payable based on criteria that include pool earnings and 20 percent is discretionary.[149] In these circumstances, we cannot conclude that less than 50 percent of incentive compensation available under NECA's overall plan is dependent on pool earnings.[150]

82. NECA also argues that its new plan emphasizes factors such as the consistency of NECA's tariff filings with Commission rules and the accuracy of usage

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[145] Id. at 1-4.

[146] Notice, 8 FCC Rcd at 1509, paras. 40-41.

[147] Id., Attachment 1 (Summary NECA Annual Incentive Plan - 1994).

[148] Id., Attachment 2 at 3, 5.

[149] Id., Attachment 4 at 2-3.

[150] The short-term plan specifies no criteria for discretionary incentive compensation awards. Id., Attachment 2 at 5. The sole criteria stated in the long-term plan for discretionary awards is "[o]ther significant long-term accomplishments." Id., Attachment 4 at 4.

projections included in those filings.[151] While we agree that rule compliance and accuracy in usage projections are proper performance objectives, we are not convinced that the other factors NECA has added to the plan eliminate all incentives to manipulate pool earnings. For instance, the plan rewards accuracy in the revenue requirement projections included in NECA's tariff filings. Many of the NECA officers and employees who are responsible for developing these projections also control NECA's processes for recording the individual carrier operating results that determine whether the projections will be deemed accurate. Those recorded results, in turn, are a function of two factors: the pool participants' actual operations; and the cost studies NECA uses to translate the costs of those operations into CL and traffic sensitive revenue requirements. Although NECA has no control over the pool participants' actual operations, NECA officers and employees have extensive control over the cost study process.[152]

83. We reject the argument that Commission review of NECA's incentive compensation plan would improperly intrude into an area of management discretion. The apparent misconduct that led to this rulemaking appears to have arisen from NECA's attempt to conform reported data with forecast data, irrespective of a forecast's accuracy. As we found in the Notice, incentive compensation plans that motivate officers or employees to engage in such attempts are unacceptable.[153] We believe, however, that further review is necessary to evaluate NECA's incentive compensation plan to ensure that it provides no improper incentives. To facilitate this review, we order NECA to show cause why it should not be required to amend that plan to eliminate any incentive based upon common line or traffic sensitive pool earnings or that might otherwise induce NECA officers or employees to violate Commission requirements. NECA's response shall show in detail why each individual component of its incentive compensation plan will not induce any NECA officer or employee to violate Commission requirements. Pending further Commission order, NECA shall not make any incentive payments based on the rates of return earned by those pools.[154]

V. ORDERING CLAUSES

84. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 201-205, 218-

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[151] Id., Attachment 1. We calculate NECA's CL and traffic sensitive rates by dividing the total CL and traffic sensitive revenue requirements by projected usage.

[152] See supra, Part III(E).

[153] Notice, 8 FCC Rcd at 1509, para. 40.

[154] We take no position at this time regarding the reasonableness of NECA's incentive compensation plan and overall compensation packages.

220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154(i), 201-05, 218-20, and 403, that Part 69 of the Commission's rules, 47 C.F.R. Part 69, IS AMENDED, as specified in Attachment B.

85. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154(i), 201-05, 218-20, and 403, that NECA SHALL FILE an annual report as specified in paragraphs 64 and 65 of this Report and Order.

86. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154(i), 201-05, 218-20, and 403, that NECA SHALL SHOW CAUSE why it should not be required to amend its incentive compensation plan to eliminate any incentive based upon common line or traffic sensitive pool earnings or that might otherwise induce NECA officers or employees to violate Commission requirements.

87. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154(i), 201-05, 218-20, and 403, that, pending further Commission order, NECA SHALL NOT MAKE any incentive payments based on the rates of return earned by the common line or traffic sensitive pools.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A--COMMENT AND REPLY LIST

Comments:

1. Alltel Telephone Operating Companies (ALLTEL)
2. Anchorage Telephone Utility (Anchorage)
3. Ameritech Operating Companies (Ameritech)
4. American Telephone and Telegraph Company (AT&T)
5. Bell Atlantic Telephone Companies (Bell Atlantic)
6. Cathy, Hutton, & Associates, Inc., (CHA)
7. General Communication, Inc. (GCI)
8. ICORE, Inc. (ICORE)
9. National Association of Regulatory Utility Commissioners (NARUC)
10. National Exchange Carrier Association (NECA)
11. National Telephone Cooperative Association (NTCA)
12. Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
13. Southwestern Bell Telephone Company (SWBT)
14. John Staurulakis, Inc. (JSI)
15. United States Telephone Association (USTA)
16. Virginia Telephone Association (VTA)

Replies:

1. ICORE
2. NECA
3. NTCA
4. SWBT
5. USTA

APPENDIX B--RULES

Parts 69 of the Commission's Rules and Regulations, 47 C.F.R. Part 69, is amended as follows:

1. Section 69.601 is amended by adding a new paragraph (c) to read as follows:

§ 69.601 Exchange carrier association..

* * * * *

(c) All data submissions to the association required by this Title shall be accompanied by the following certification statement signed by the officer or employee responsible for the overall preparation for the data submission:

CERTIFICATION

I am (title of certifying officer or employee). I hereby certify that I have overall responsibility for the preparation of all data in the attached data submission for (name of carrier) and that I am authorized to execute this certification. Based on information known to me or provided to me by employees responsible for the preparation of the data in this submission, I hereby certify that the data have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission.

Date:_____

Name:_____

Title:_____

(Persons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the U.S. Code, Title 18, Section 1001).

2. Section 69.602 is amended to read as follows:

§ 69.602 Board of directors.

(a) For purposes of this Section, the association membership shall be divided into three subsets:

(1) The first subset shall consist of the telephone companies owned and operated by the seven Regional Bell Holding Companies;

(2) The second subset shall consist of all other telephone companies with annual operating revenues in excess of forty million dollars;

(3) The third subset shall consist of all other telephone companies.

All commonly controlled companies shall be deemed to be one company for purposes of this Section.

(b) There shall be fifteen directors of the association.

(c) Until 1996, three directors shall represent the first subset, three directors shall represent the second subset, and nine directors shall represent the third subset. In 1996 and thereafter, two directors shall represent the first subset, two directors shall represent the second subset, six directors shall represent the third subset, and five directors shall represent all three subsets.

(d) No director who represents all three subsets shall be a current or former officer or employee of the association or of any association member, or have a business relationship or other interest that could interfere with his or her exercise of independent judgment.

(e) Each subset shall select the directors who will represent it individually through an annual election in which each member of the subset shall be entitled to vote for the number of directors that will represent such members' subset.

(f) The association membership shall select the directors for the following calendar year who will represent all three subsets through an annual election in which each member of the association shall be entitled to one vote for each director position. There shall be at least two candidates meeting the qualifications in paragraph (d) of this section for each such director position:

(1) in any election in which the most recently elected

director for such position is not a qualified candidate;

(2) if there has been no election for such position having more than one qualified candidate during the present and the two preceding calendar years; and

(3) in any election for which the ballot lists two or more qualified candidates.

(g) At least one director representing all three subsets shall be a member of each committee of association directors.

(h) For each access element or group of access elements for which voluntary pooling is permitted, there shall be a committee that is responsible for the preparation of charges for the associated access elements that comply with all applicable sections in this Part.

(i) Directors shall serve for a term of one year commencing January 1 and concluding on December 31 of each year.

3. Section 69.605 is amended by adding a new paragraph (e) to read as follows:

§ 69.605 Reporting and distribution of pool access revenues.

* * * * *

(e) The association shall submit a report on or before February 1 of each calendar year describing the association's cost study review process for the preceding calendar year as well as the results of that process. For any revisions to cost study results made or recommended by the association that would change the respective carrier's calculated annual common line or traffic sensitive revenue requirement by ten percent or more, the report shall include the following information:

(1) the name of the carrier;

(2) a detailed description of the revisions;

(3) the amount of the revisions;

(4) the impact of the revisions on the carrier's calculated common line and traffic sensitive revenue requirements; and

(5) the carrier's total annual common line and traffic sensitive revenue requirement.

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 95-98
Washington, D.C. 20554

In the Matter of	)	
	)	
Eligibility for the Specialized	)	
Mobile Radio Services	)	GN Docket No. 94-90
and Radio Services in the	)	
220-222 MHz Land Mobile Band	)	
and Use of Radio Dispatch	)	
Communications	)	

REPORT AND ORDER

Adopted: March 7, 1995 **Released:** March 7, 1995

By the Commission:

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I. INTRODUCTION

1. In this *Report and Order*, we modify our rules governing licensee eligibility in the Specialized Mobile Radio (SMR) service and in the subscriber-based 220-222 MHz land mobile (commercial 220 MHz) services.[1] Specifically, by this action we eliminate Sections 90.603(c) and 90.703(c) of our Rules that prohibit wireline telephone common carriers from holding or controlling SMR and commercial 220 MHz licenses.[2] In addition, we eliminate our prohibition on the provision of dispatch service by providers of Commercial Mobile Radio Service (CMRS), including cellular licensees, other licensees in the Public Mobile Services, and licensees in the Personal Communications Services (PCS).[3] After reviewing the record, we find that these restrictions no longer serve the public interest and should be eliminated.

II. BACKGROUND

2. When the Commission established the SMR service in 1974, it elected to prohibit wireline telephone common carriers from holding SMR base station licenses.[4] The Commission has stated that the wireline prohibition was intended to ensure that the provision of SMR service would be available as a business opportunity for small entrepreneurs and to reduce incentives for wireline common carriers to engage in discriminatory interconnection

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[1] 47 C.F.R. §§ 90.603(c), 90.703(c) (1993). *See* Appendix A (rule changes).

[2] Section 22.99 of the Commission's Rules defines wireline telephone common carriers as "common carriers ... in the business of providing landline local exchange telephone service." 47 C.F.R. § 22.99. For purposes of this *Report and Order*, therefore, the terms "wireline" and "local exchange carrier" or "LEC" are interchangeable.

[3] 47 C.F.R. §§ 22.519(a), 22.911(d) (1993). *See* Appendix A (rule changes). "Public Mobile Services" are regulated under Part 22 of our Rules. *See* 47 C.F.R. § 22.99. "Personal Communications Services" are regulated under Part 24 of our Rules. 47 C.F.R. Part 24 (1993).

[4] *See* An Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz and Amendment of Parts 2, 18, 21, 73, 74, 89, 91, and 93 of the Rules Relative to Operations in the Land Mobile Service Between 806 and 960 MHz, *Second Report and Order*, Docket No. 18262, 46 FCC 2d 752, 787 (1974) (*SMR Allocation Second Report and Order*) (codified at 47 C.F.R. § 90.603(c) (1993)). As this rule has been interpreted, a wireline telephone common carrier may not be in control of an SMR licensee, whether such control is *de jure* (ownership of 50 percent or more of the company's stock) or *de facto* (control in fact regardless of amount of stock owned). *See* Letter from Ralph A. Haller, Chief, Private Radio Bureau, to Henry Goldberg (July 1, 1991). *See also* In re McCaw Cellular Communications Inc., 4 FCC Rcd 3784, 3788-89 (1989) (discussing indicia of control).

practices.[5] In 1986, the Commission proposed to eliminate the SMR restriction after receiving several requests from wireline carriers for waiver of Section 90.603(c).[6] The Commission observed that the original rationale for establishing the restriction might no longer apply. The Commission subsequently granted several conditional waivers to wireline carriers seeking to acquire SMR stations.

3. In 1992, the Commission terminated the proceeding on grounds that the record had become stale and stated that the restriction should be retained until the Commission could more fully evaluate the competitive impact of allowing wireline providers into the SMR marketplace.[7] The Commission terminated all waivers that had been previously granted, but gave waiver recipients an opportunity to rejustify their waiver grants.[8] Southwestern Bell Corporation (Southwestern Bell), Bell Atlantic Enterprises International Inc. (Bell Atlantic), and US West Paging, Inc. (US West) filed requests to rejustify the waiver grants that had been terminated pursuant to the *Termination Order*.[9] In addition, RAM Mobile Data USA Limited (RAM Mobile), Cass Cable TV, Inc. (Cass Cable), and American Paging, Inc. (API)

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[5] *See* Amendment of Part 90 of the Commission's Rules Governing Eligibility for Specialized Mobile Radio Services in the 800 MHz Land Mobile Band, *Order*, PR Docket No. 86-3, 7 FCC Rcd 4398, 4399 (1992) (*Termination Order*).

[6] Amendment of Part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Band, *Notice of Proposed Rule Making*, PR Docket No. 86-3, FCC 86-2, 51 Fed. Reg. 2910 (1986). *Termination Order*, 7 FCC Rcd 4398. *See, e.g., Memorandum Opinion and Order,* GN Docket No. 86-251, 60 RR 2d 583, 602 (1986) (James F. Rill request concerning PacTel transfer).

[7] *Termination Order*, 7 FCC Rcd 4398.

[8] *Id.* at 4399. The *Termination Order* indicated that all conditional waivers would automatically terminate within 90 days of its effective date, unless within 60 days of the effective date recipients of these waivers filed a request demonstrating that continuation of the waiver was in the public interest. We also denied a subsequent request to stay our waiver termination. *See* Amendment of Part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Band, *Order*, PR Docket No. 86-3, 7 FCC Rcd 6879 (1992).

[9] *See* Southwestern Bell Request for Permanent Waiver, PR Docket No. 86-3 (filed Sept. 18, 1992); Bell Atlantic Request for Rule Waiver, PR Docket No. 86-3 (filed Oct. 14, 1992); US West Request for Permanent Waiver, PR Docket No. 86-3 (filed Oct. 20, 1992). On October 19, 1992, PacTel Paging and PacTel Paging of California requested a 120 day extension of Section 90.603(c), which was granted in order to facilitate divestiture of facilities. *See* PacTel Request for Temporary Waiver (filed Oct. 19, 1992).

subsequently have sought waivers of the wireline prohibition.[10] The Commission issued a public notice requesting public comment regarding the waiver requests on April 12, 1994.[11] In addition, BellSouth has filed an appeal of the Commission's *Termination Order*, which is pending before the D.C. Circuit.[12]

4. In 1991, the Commission adopted an analogous restriction for the newly established commercial 220 MHz service that prevents wireline carriers from holding licenses in that service as well.[13] The Commission's rationale for excluding wireline carriers from 220 MHz was the same as its original rationale for excluding wireline carriers from SMR licensing.[14]

5. The Omnibus Budget Reconciliation Act of 1993 (Budget Act) amended the Communications Act and prescribed comprehensive regulatory changes for the mobile services marketplace. The legislative history of the Budget Act identified the Commission's ban against wireline carriers holding SMR licenses as a regulation that should be reviewed by the

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[10] *See* RMD Request for Transfer of Control and Rule Waiver (filed Sept. 22, 1993); Cass Cable Request for Rule Waiver (filed Nov. 8, 1993); API Request for Rule Waiver (filed Nov. 24, 1993); API Request for Rule Waiver (filed Oct. 20, 1994).

[11] Comment Sought on Requests to Waive Section 90.603(c) to Permit Wireline Common Carriers to Hold SMR Licenses, *Public Notice*, DA 94-329, 59 Fed. Reg. 19,720 (Apr. 25, 1994). The majority of the 19 commenters and 5 reply commenters support the petitioners' requests for waiver. *See, e.g.*, Dial Page Comments (filed May 20, 1994) at 3; National Telephone Cooperative Association Comments (filed May 20, 1994) at 2; and American Telecommunications Association, Inc. Comments (filed May 20, 1994) at 1 (supporting the requests, but conditioning Cass Cable and API requests on outcome of any future rule making addressing wireline eligibility).

[12] *See* Petition for Review, BellSouth Corporation v. FCC, No. 92-1334 (D.C. Cir. filed Aug. 3, 1992).

[13] *See* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Report and Order*, PR Docket No. 89-552, 6 FCC Rcd 2356 (1991), *recon. granted, in part Memorandum Opinion and Order*, 7 FCC Rcd 4484 (1992). *See also* 47 C.F.R. § 90.703(c) (1993).

[14] *See* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Memorandum Opinion and Order*, PR Docket No. 89-552, 7 FCC Rcd, 4484, 4487 (stating that "the genesis of our regulatory scheme for private carriers at 220-222 MHz was inspired by the treatment of Specialized Mobile Radio Service licensees under subpart S.").

Commission.[15] The Commission thus proposed to eliminate its restrictions that prohibit wireline telephone common carriers from holding SMR and commercial 220 MHz licenses on the grounds that the restrictions may no longer be necessary and that competition would be promoted by their elimination.[16]

6. At the same time, the Commission also proposed to eliminate the prohibition on the provision of dispatch service by common carriers, including cellular licensees, other licensees in the Public Mobile Service, and PCS licensees.[17] The prohibition, which was originally enacted by Congress as part of the 1982 amendments to the Communications Act, prohibited common carriers licensed after January 1, 1982 , including all cellular licensees, from offering dispatch services.[18] In the Budget Act, Congress retained the statutory ban, thus potentially applying it to all CMRS providers, but granted the Commission authority to repeal the ban by regulation in whole or in part.[19] In the *Notice*, the Commission tentatively concluded that the dispatch prohibition was outdated and that its repeal would promote competition.[20] Thirty-two (32) comments and twelve (12) reply comments were filed in response to the proposals in this proceeding.[21]

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[15] *See* H. Rep. No. 111, 103d Cong., 1st Sess. at 262 (stating that "[c]urrent Commission policy prohibits common carriers from being licensed to offer Specialized Mobile Radio Service. The Committee encourages the Commission to re-examine this restriction in light of the enactment of this section to determine the extent to which such a restriction is in the public interest.").

[16] Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, *Notice of Proposed Rule Making*, GN Docket No. 94-90, 9 FCC Rcd 4405 (1994) (*Notice*). *See also* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b)(2)(A), (B), 107 Stat. 312, 392 (1993) (Budget Act).

[17] *Notice* at ¶ 30.

[18] *See* former 47 U.S.C. § 332(c)(2) (1982); 47 C.F.R. § 22.519(a) (1993). A Commission prohibition against cellular carriers engaging in fleet dispatch services predated the 1982 statutory ban on dispatch service. *See* 47 C.F.R. § 22.911(d) (1993); *SMR Allocation Second Report and Order*, 46 FCC 2d at 761.

[19] *Compare* former 47 U.S.C. § 332(c)(2)(1982) *with* 47 U.S.C. § 332(c)(2) (1993); *see* footnote 87, *infra*.

[20] *Notice* at ¶¶ 29-34 .

[21] A list of commenters and acronyms used to identify them are included as Appendix B.

III. DISCUSSION

A. Licensee Eligibility in SMR and Commercial 220 MHz Service

7. Background. In the *Notice*, we tentatively concluded that the SMR and commercial 220 MHz wireline ownership restrictions are no longer appropriate in today's competitive mobile services marketplace. As described in the *Notice*, there were several reasons for this tentative conclusion. First, we observed that the risk of wireline carriers being able to cause competitive harm if allowed to enter the SMR market has diminished in recent years. We indicated that the breakup of AT&T and the rapid introduction of new mobile service options have combined to create an environment in which wireline carrier participation in mobile services has the potential to increase competition rather than impede it.[22]

8. In the *Notice,* we also drew comparisons to PCS, noting that we have already concluded that wireline entry into PCS will produce economies of scope for that service, which will promote its rapid development and yield a broader array of PCS services at lower costs to consumers. We indicated that similar benefits could result from allowing wireline entry into the SMR and commercial 220 MHz services.[23]

9. We also tentatively concluded that the restrictions no longer are necessary to safeguard against competitive concerns that the LECs may (1) discriminate in the offering of interconnection to non-affiliated SMR licensees or (2) use their market power in the local exchange market to cross-subsidize SMR services and undercut their competitors. We indicated that existing statutory and regulatory safeguards probably were sufficient to prevent LECs from engaging in these discriminatory activities.[24] In particular, the Commission has found that, pursuant to Section 201 of the Communications Act, it is in the public interest to require LECs to provide reasonable interconnection to CMRS providers.[25] We also noted that independent accounting and structural safeguards exist and would apply to wireline

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[22] *Notice* at ¶ 16. Because of the dominance of AT&T in the 1970's, the Commission viewed the prohibition on wireline entry as consistent with promoting competition in the fledgling SMR industry. *See SMR Allocation Second Report and Order*, 46 FCC 2d at 760, 767-69 (noting "a general feeling of malaise about letting wireline monopolies expand in the mobile communications market which has been traditionally served primarily by competitive entities"); *see also Notice* at ¶ 5.

[23] *Id.* at ¶ 17.

[24] *Id.* at ¶¶ 18-20.

[25] *See also* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-253, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*) at ¶ 239.

participants in the SMR market to prevent cross-subsidization.[26] We did, however, seek comment on the effectiveness of applying these existing safeguards to wireline carriers entering these services.[27]

10. We made additional observations as well. We indicated that wireline entry was unlikely to chill further development of the service because SMR spectrum has been licensed fully in most metropolitan areas. As a result, we stated that wireline entry into the SMR service would likely occur through acquisitions that are subject to Commission review. Similarly, we reasoned that wireline entry into commercial 220 MHz likely would be gradual and subject to case-by-case review by the Commission as part of the application process. We also asked whether commercial 220 MHz services were sufficiently disparate from any LEC offering to make negligible any ability these carriers might have to exert undue market power or restrain trade. This was the analysis we used to justify LEC entry into narrowband PCS.[28] We further noted that wireline participation could promote opportunities for additional entry of small, rural telephone companies and could infuse new capital and expertise into the mobile services marketplace.[29]

11. Also, while we generally concluded that the wireline restrictions were outmoded, we questioned whether there was any justification for continuation of the restrictions for either or both of the SMR and commercial 220 MHz services. Finally, we deferred consideration of whether there was a need to restrict cellular eligibility for SMR or commercial 220 MHz licensing pending a decision in GN Docket No. 93-252 to impose a spectrum cap on CMRS providers.[30]

12. Comments. All but two commenting parties support our proposal to permit wireline telephone common carriers to hold SMR and commercial 220 MHz licenses. Many commenters maintain that eliminating the restrictions in the SMR service would facilitate competition and that increased competition would thereby benefit consumers through lower prices and expanded choices.[31] Commenters also agree that our proposal is consistent with our efforts to achieve regulatory symmetry by providing identical eligibility requirements for

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[26] *See* Part 32 and Part 64 of the Commission's Rules, 47 C.F.R. Parts 32, 64 (1993).

[27] *Notice* at ¶ 27.

[28] *Id.* at ¶¶ 21-22.

[29] *Id.* at ¶¶ 23-24.

[30] *Id.* at ¶ 28.

[31] *See, e.g.*, AMTA Comments at 6-7; Bell Atlantic Comments at 2, 4-5; BellSouth Comments at 13-15; Century Comments at 9-10; GTE Comments at 5; NYNEX Comments at 2-4; and Rural Independents Comments at 4-6.

all CMRS licensees.[32] In addition, several commenters note that changes in the SMR marketplace during the time since the service was established eliminate the need for wireline eligibility restrictions.[33] Finally, commenting parties generally agree that existing accounting and interconnection safeguards will adequately prevent cross-subsidization and discrimination.[34] The Commission was encouraged to enforce these existing safeguards rigorously.[35]

13. Most parties who expressly commented on commercial 220 MHz service generally support lifting the prohibition on wireline entry for the same reasons set forth in support of lifting the restrictions on wireline entry into SMR service.[36] AMTA, however, opposes lifting the restrictions at this time. AMTA contends that the commercial 220 MHz service is still in its infancy, and that its competitive potential is largely unknown.[37]

14. SMR WON is the only commenting party to oppose lifting the wireline prohibition for both SMR and commercial 220 MHz services.[38] Specifically, SMR WON expresses concern that eliminating the restriction would harm traditional SMR operators that would not be able to compete against the market power of wireline common carriers.[39] Moreover, SMR WON alleges that existing safeguards have been ineffective in preventing wireline carriers from exercising their monopoly power and financial strength to the detriment

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[32] *See, e.g.*, Bell Atlantic Comments at 4-5; BellSouth Comments at 11-13; CTIA Comments at 7-9; GTE Comments at 5-6; ITA/CICS Comments at 4; TDS Comments at 4-5; and USTA Comments at 2.

[33] *See, e.g.*, Nextel Comments at 4-5; NYNEX Comments at 4-5; Sprint Comments at 1-3; and USTA Comments at 2.

[34] *See, e.g.*, NYNEX Comments at 6; Polar Comments at 8-10; PacTel Comments at 2-3; PRTC Comments at 4-5; and AMTA Comments at 7-8.

[35] AMTA Comments at 8; and ITA/CICS Comments at 4.

[36] *See, e.g.*, Bell Atlantic Comments at 2; Century Comments at 2; GTE Comments at 4; NABER Comments at 4; Pacific Bell Comments at 2; Rural Independents Comments at 1-2; Southwestern Bell Comments at 4; Sprint Comments at 1-3; and USTA Comments at 1.

[37] AMTA Comments at 9-10.

[38] SMR WON Comments at 3.

[39] *Id.* at 12-16.

of competition in the cellular marketplace.[40] Therefore, SMR WON urges that no changes in the wireline restriction should be made except as part of comprehensive legislation addressing the monopoly power of the LECs.[41]

15. Decision. We amend our rules to permit wireline telephone common carriers to acquire SMR and commercial 220 MHz licenses without restriction and dismiss pending waiver requests as moot. Eliminating the wireline prohibition is likely to yield substantial public benefits. Commenters echoed our view that permitting wireline common carriers to acquire SMR and commercial 220 MHz licenses will allow the realization of significant economies of scope and provide a new source of capital that will yield a broader array of services at lower costs to consumers.[42] Repealing the wireline prohibition also will stimulate competition and promote opportunities for additional entry of numerous small wireline carriers, particularly in rural areas, in addition to the large wireline carriers.[43] Moreover, we note that the record supports our view that changes in the wireless marketplace, including our efforts to achieve regulatory symmetry among comparable mobile services, obviate the need for the wireline restrictions.[44] Finally, we believe that existing regulatory safeguards will prevent wireline common carriers from engaging in anti-competitive conduct.

16. We expect that wireline participation in the provision of SMR and commercial 220 MHz services will benefit the consumer. Specifically, allowing LECs to participate in SMR and commercial 220 MHz services will likely produce significant economies of scope by allowing wireline carriers to combine related services so that they may be provided at less cost than providing them separately.[45] We expect that because of their existing wireline infrastructure, LECs will be likely to achieve technical efficiencies in spectrum use that will

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[40] *Id.*

[41] *Id.* at 9-11.

[42] *See, e.g.*, NYNEX Comments at 2-3; Rural Independents Comments at 5; PRTC Comments at 3; and RMD Comments at 2-3.

[43] NYNEX Comments at 2-3; and Rural Independents Comments at 5.

[44] *See, e.g.*, NYNEX Comments at 4; Rochester Comments at 2; Rural Independents Comments at 3-4; PacTel Comments at 2; PRTC Comments at 2-3; Polar Comments at 6-7; and SNET Comments at 3. *See also CMRS Second Report and Order*, 9 FCC Rcd 1411; Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Third Report and Order*, GN Docket 93-252, 9 FCC Rcd 7988 (1994) (*CMRS Third Report and Order*).

[45] *See* Michael E. Porter, *Competitive Strategy: Techniques for Analyzing Industries and Competitors* 303-305 (1980).

result in lower costs. Such economies can promote more rapid development of technology and yield a broader range of services at lower costs to consumers.[46]

17. We expect that wireline entry also will benefit competition by providing an additional source of capital and expertise in the mobile services marketplace.[47] Allowing wireline entry will give SMR providers the ability to draw upon this capital and expertise as they move from stand-alone analog to wide-area networks.[48] Despite AMTA's opposition, we reach a similar conclusion with respect to participation by wireline carriers in the commercial 220 MHz service.[49] We observe that access to the capital and technical expertise of wireline carriers may be important to the commercial 220 MHz service at its critical stage of technological development. SNET notes, for example, that wireline carriers can "quickly allocate resources, including existing infrastructure, into wireless services that will speed the deployment of services, produce innovative service offerings, promote competition and produce competitive rates for consumers."[50] We also note that commercial 220 MHz, like PCS, is a new, developing service, and we have elected to allow wireline carriers to participate fully in both the narrowband and broadband PCS services.[51] Moreover, we observe that commercial 220 MHz service resembles narrowband PCS in that it is a two-way, narrowband service that is technically distinct from other service offerings provided by LECs. In the *Narrowband PCS First Report and Order*, we concluded that the dissimilarity between narrowband PCS and LEC service offerings provided additional justification for allowing wireline entry. We conclude that the same rationale supports our conclusion with respect to commercial 220 MHz service.

18. Wireline participation also could promote opportunities for additional entry of small entrepreneurs, such as rural telephone companies, in the SMR service. As the record in

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[46] *See Notice* at ¶ 17; *see also* NYNEX Comments at 2-3; and Rural Independents Comments at 5. We reached a similar conclusion in allowing LECs to participate in the provision of PCS. *See Broadband PCS Second Report and Order*, 8 FCC Rcd 7700.

[47] *See Notice* at ¶ 24; *see also* NYNEX Comments at 2-3; and PRTC Comments at 3.

[48] RMD Comments at 2-3.

[49] *See* AMTA Comments at 9-10. We note that we intend to issue a *Notice of Proposed Rule Making* to address licensing of services in the 220 MHz band, including commercial 220 MHz service.

[50] SNET Comments at 6; *see also* Southwestern Bell Reply Comments at 4-5.

[51] *See Broadband PCS Second Report and Order*, 8 FCC Rcd 7700. *See also* Amendment of the Commission's Rules to Establish New Personal Communications Services, *First Report and Order*, GN Docket No. 90-314, 8 FCC Rcd 7162 (1993) (*Narrowband PCS First Report and Order*), *recon. Memorandum Opinion and Order*, 9 FCC Rcd 1309 (1994).

this proceeding suggests, small wireline carriers in rural communities are well positioned to provide SMR and commercial 220 MHz services in areas that presently are unserved or underserved.[52] Eliminating the wireline restrictions would allow these providers to offer cost-effective services to rural customers by building on their existing infrastructure and presence in the market. We disagree with SMR WON's allegation that wireline participation would impede competition, especially in rural communities.[53] As commenters (including rural telcos) point out, wireline entry will bring new or additional SMR services to underserved rural areas, not merely replace existing small SMR operators.[54] Additional opportunities for small business entry into the SMR business, including participation by small LECs, are being considered as part of the Commission's competitive bidding proceeding.[55] SMR WON erroneously suggests that our reference to our efforts to help small businesses successfully compete at auctions reveals that our real motivation for permitting wireline entry is to raise more funds at auction.[56] Rather, we repeal the wireline prohibition because the record overwhelmingly indicates that wireline participation would serve the public interest by promoting competition, lowering costs, and expanding consumer choice. Moreover, we note that Congress specifically prohibits us from exercising our auction authority for the primary purpose of raising revenues.[57]

19. Additionally, as we tentatively concluded in our *Notice*, the wireline restrictions are outmoded in view of recent regulatory changes in the mobile services marketplace. The Budget Act mandated that similar mobile services receive comparable regulatory treatment and divided all mobile services into two categories, CMRS and private mobile radio service (PMRS).[58] In our *CMRS Second Report and Order*, we concluded that certain private mobile

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[52] *See, e.g.*, Polar Comments at 2-5; and Rural Independents Comments at 4. *See also Notice* at ¶ 23.

[53] SMR WON Comments at 6-7.

[54] East Otter Tail Comments at 2-3; and Rural Independents Comments at 5.

[55] *See Notice* at ¶ 23. *See also* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348 at ¶¶ 267-282 (1994), *recon. Second Memorandum Opinion and Order,* 9 FCC Rcd 7245 (1994); *Fifth Report and Order,* PP Docket No. 93-253, 9 FCC Rcd 5532 (1994), *recon. Fifth Memorandum Opinion and Order*, FCC 94-285 (released Nov. 23, 1994), *Erratum*, DA 95-19 (released Jan. 10, 1995); *Further Notice of Proposed Rule Making,* PP Docket No. 93-253, FCC 94-271 (released Nov. 4, 1994).

[56] *See* SMR WON Comments at 11-12.

[57] *See* 47 U.S.C. § 309(j)(7).

[58] *See* Budget Act § 6002(b)(2)(A), (B); *see also Notice* at ¶¶ 13-14.

radio services, including SMR and commercial 220 MHz licensees, would be subject to reclassification as CMRS if they provide "interconnected service."[59] To the extent that SMR and commercial 220 MHz licensees qualify as CMRS providers, the principles of regulatory symmetry suggest that they should be subject to regulations similar to those imposed on cellular carriers, PCS licensees and other CMRS providers. Elimination of Sections 90.603(c) and 90.703(c) thereby furthers our objective to apply a symmetrical, consistent set of regulations governing CMRS by establishing identical wireline eligibility requirements for all CMRS providers.[60]

20. As we observed in our *Notice*, the mobile services industry also has undergone substantial changes that obviate the need for the wireline restrictions.[61] The record shows that the competitive concerns that led to the SMR eligibility restrictions are no longer applicable in the current competitive marketplace. The SMR industry has matured significantly since it was established in 1974.[62] As AMTA points out, SMR channels already are in service in most large urban areas.[63] Wireline carriers therefore will be largely limited to acquiring existing businesses, and all such transfers would be subject to Commission review.[64] We will consider the competitive impact of any transfer to a wireline carrier as part of our public interest determination. In addition, we note that wireline SMR acquisitions will be subject to our CMRS spectrum cap, which restricts the amount of cellular, broadband PCS and SMR

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[59] *CMRS Second Report and Order*, 9 FCC Rcd 1411 at ¶¶ 90, 95. In that docket, the Commission also eliminated both the "40-mile rule" and automatic channel cancellation loading restrictions in the 800 MHz band in furtherance of our goal of ensuring regulatory symmetry. *See CMRS Third Report and Order*, 9 FCC Rcd 7988 at ¶¶ 190-195; *see also* AMTA Comments at 7.

[60] *See* Polar Comments at 6-7; PRTC Comments at 2; RMD Comments at 3; Rochester Comments at 2; SNET Comments at 3; AMTA Comments at 7; Bell Atlantic Comments at 4-5; and BellSouth Comments at 11-13. SMR WON failed to address why the Commission should retain the wireline restrictions in view of Congress' mandate to provide similar services with similar regulatory treatment. *See, e.g.*, BellSouth Reply Comments at 3.

[61] *Notice* at ¶ 21.

[62] *See, e.g.*, NYNEX Comments at 4; Rochester Comments at 2; Rural Independents Comments at 3-4; and AMTA Comments at 5-6.

[63] AMTA Comments at 6; *see also* NYNEX Comments at 5; and BellSouth Comments at 10.

[64] *See Notice* at ¶ 21; *see also* NYNEX Comments at 5; and BellSouth Comments at 10.

spectrum that any one entity may acquire in a geographic market.[65] This acts as a competitive safeguard by limiting all wireline carriers from exerting undue market power in these services. Furthermore, we observe that the spectrum cap will also limit cellular licensees' ability to exercise market power and we therefore do not believe that additional restrictions on cellular participation are warranted.[66]

21. Moreover, customer demand and the desire to offer "seamless" communications services has fostered the development of wide-area systems in both the 800 MHz and 900 MHz band.[67] Wide-area licensees have aggregated spectrum across large regions, and are poised to offer services competitive with larger CMRS providers, such as cellular and PCS. For these reasons, we are not persuaded by SMR WON's argument that the SMR market is still relatively immature.[68] These systems do not continue to require the same degree of regulatory nurturing that may have been appropriate during the early days of this service.[69] In addition, we note that artificial eligibility restraints may hinder the growth of wide-area systems and their ability to compete with cellular and other CMRS licensees.[70]

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[65] *See CMRS Third Report and Order*, 9 FCC Rcd 7988 at ¶¶ 238-285. We placed a 45 MHz cap on the amount of combined PCS, cellular and SMR spectrum classified as CMRS in which an entity may have an attributable interest in any geographic area. We declined to include terrestrial narrowband radio services within the cap, noting that there is little risk that an entity could use narrowband allocations to exert undue market power over CMRS as a whole. *Id.* at ¶ 267.

[66] *See Notice* at ¶ 28; *see also CMRS Third Report and Order*, 9 FCC Rcd 7988 at ¶¶ 238-285.

[67] *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development on SMR Systems in the 800 MHz Frequency Band, *Further Notice of Proposed Rulemaking*, PR Docket No. 93-144, PP Docket No. 93-253, FCC 94-271 (released Nov. 4, 1994)(*800 MHz SMR Notice*).

[68] SMR WON Comments at 8, n.7. As we discussed in the *Notice*, licensees have increasingly expressed an interest in aggregating channel blocks and using advanced technologies to increase spectrum capacity and serve wide areas efficiently. *Notice* at ¶ 2.

[69] *See* AMTA Comments at 6-7; NYNEX Comments at 4.

[70] We are examining ways to facilitate wide area licensing for 800 MHz and 900 MHz SMR service. *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *First Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993); *800 MHz SMR Notice*, FCC 94-271. *See also CMRS Third Report and Order*, 9 FCC Rcd 7988.

22. In addition, we conclude that existing regulatory safeguards are sufficient to prevent possible discrimination and cross-subsidization. We note that wireline telephone companies are required to provide reasonable interconnection upon request.[71] As evidence of the infrequency of interconnection problems, we are unaware of any pending complaints alleging discriminatory interconnection filed by unaffiliated cellular providers against wireline carriers with cellular affiliates.[72] We emphasize, however, that we agree with AMTA and ITA/CICS that the public interest is best served by strongly enforcing our policies and statutory requirements with respect to the interconnection obligations of LECs.[73]

23. Additionally, independent accounting and structural safeguards exist to protect against cross-subsidization of services and discriminatory pricing.[74] In the CMRS docket, we determined that our joint cost and affiliate transaction rules would apply to all CMRS providers with LEC affiliates.[75] These rules require LECs[76] to maintain procedures to separate the costs of regulated activities from those of their activities that are classified as nonregulated for federal accounting purposes,[77] and to account for their transactions with their nonregulated

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[71] *See CMRS Second Report and Order*, 9 FCC Rcd 1411 at ¶¶ 227-239 (requiring LECs to provide reasonable and fair interconnection for all CMRS). *See also* 47 U.S.C. § 201. An SMR or commercial 220 MHz licensee that has been denied interconnection may file a complaint with the Commission pursuant to Section 208 of the Communications Act. *See* 47 U.S.C. § 208. The Commission must respond to all complaints filed by a CMRS provider that its reasonable request for interconnection was refused. *See* 47 U.S.C. § 332(c)(1)(B).

[72] *See Notice* at n. 73; *see also* East Otter Tail Reply Comments at 3; Consolidated Communications Corp. Reply Comments at 4; Polar Communications Reply Comments at 6; and Sprint Reply Comments at 3-4.

[73] *See* AMTA Comments at 8 and ITA/CICS Comments at 4.

[74] *See CMRS Second Report and Order*, 9 FCC Rcd 1411 at ¶ 218.

[75] *Id. See also* Parts 32 and 64 of the Commission's Rules, 47 C.F.R. Parts 32, 64 (1993).

[76] These rules do not apply to carriers that employ average schedules in lieu of determining their costs. 47 C.F.R. § 64.902 (1993).

[77] *See* 47 C.F.R. § 64.901 (1993). Section 32.23 of our Rules, 47 § C.F.R. 32.23, defines the circumstances under which LEC activities are classified as nonregulated for federal accounting purposes. This nonregulated category includes activities, such as SMR services, that never have been subject to rate regulation.

affiliates in accordance with specified valuation methodologies.[78] Since most SMRs and commercial 220 MHz licensees fall inside the CMRS definition (and are not rate-regulated), these existing and applicable accounting rules should deter cross-subsidization problems. We also note that the largest LECs are subject to price caps, which provides additional assurances that no cross-subsidization will occur. Finally, we observe that the Commission adopted the same approach concerning structural separations and accounting safeguards in our PCS proceeding.[79] We therefore decline to impose structural separation requirements in addition to those already imposed on certain dominant telephone carriers (*i.e.*, BOCs) that provide cellular service.[80] We note, however, that we intend to enforce our existing safeguards vigorously in this area and are prepared to take additional steps, if necessary, to protect against cross-subsidization of services and discriminatory pricing.[81]

24. In sum, the rapid growth of mobile services, regulatory changes and evolving competition in the mobile services industry justify the repeal of the restrictions on wireline telephone common carriers holding licenses in the SMR and commercial 220 MHz services. Accordingly, we eliminate these rules today. In addition, we dismiss requests for waivers filed by Southwestern Bell, Bell Atlantic, US West, RAM Mobile, Cass Cable and API. These requests are mooted by our decision to eliminate the wireline restriction.

B. Common Carrier Dispatch Prohibition

25. Background. In the *Notice*, the Commission tentatively concluded that eliminating the dispatch ban would enhance competition and thereby provide consumers with greater choice, more innovative service offerings, and lower prices.[82] Commenters were invited to

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[78] *See* 47 C.F.R. §§ 32.27, 64.902 (1993).

[79] *See Broadband PCS Second Report and Order*, 8 FCC Rcd 7700 at ¶ 126. We also recently declined to impose added structural safeguards for landline telephone carriers with CMRS affiliates when the issue was presented to us in Gen. Docket No. 93-252. We indicated that we might explore the issue in a separate proceeding. *See CMRS Second Report and Order*, 9 FCC Rcd 1411 at ¶¶ 218-19.

[80] *See* 47 C.F.R. § 22.901(b) (1993). This rule requires the BOCs to offer cellular services through a separate subsidiary and that all transactions with the cellular affiliate must be at arms length.

[81] *See, e.g.*, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, *Notice of Proposed Rule Making*, 9 FCC Rcd 5408 (1994).

[82] *Notice* at ¶ 30.

address the competitive consequences of permitting all CMRS providers[83] to offer dispatch services.[84] As an alternative, however, the Commission solicited comment on whether it should delay repeal of the rule until August 10, 1996 (3 years from the date the Budget Act amendments became law), allow CMRS licensees (other than SMRs) to provide dispatch only on a secondary basis, or impose a limit on the amount of system capacity that non-SMR CMRS licensees may devote to dispatch service.[85] The Commission requested comment on whether these measures were needed to prevent any anti-competitive impact that may result from participation by all CMRS providers in the market, with particular focus on cellular entry into dispatch. In addition, the Commission requested comment on whether mobile common carriers that are not land-based (*i.e.,* aviation, marine, and mobile satellite licensees who provide common carrier service) should be permitted to offer dispatch service. Noting that these categories of licensees previously were not prohibited from offering dispatch service under Section 332, we tentatively concluded that Congress did not intend to extend the dispatch ban to non-land mobile licensees when it amended that section in 1993.[86] Instead, the Commission reasoned that Congress meant simply to repeat and incorporate its old prohibition against common carrier land mobile service providers offering dispatch service without modification and to give the Commission authority to repeal the prohibition in whole or in part.[87]

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[83] The Budget Act provides that:

> [a] common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

Budget Act at § 6002(b)(2), 47 U.S.C. § 332(c)(2). Most CMRS licensees are thereby prohibited from offering dispatch service, unless the Commission determines that termination of this prohibition will serve the public interest.

[84] *Notice* at ¶¶ 31-32. While we had previously solicited comment on the dispatch prohibition, we requested additional and more specific information in order to make a determination. *Id.* at ¶ 29.

[85] *Id.*

[86] *Id.* at ¶ 34.

[87] *Id.*

26. Comments. Most commenters support our view that eliminating the dispatch prohibition would promote competition in the dispatch service and thereby provide customers with expanded choices and lower prices.[88] In addition, many commenters observe that the dispatch prohibition is inconsistent with our efforts to achieve regulatory symmetry because it allows SMRs to provide a service that other CMRS providers, such as cellular licensees, may not.[89] Moreover, several commenting parties note that recent technological improvements obviate any concern that land mobile licensees' common carrier service obligations would be compromised by the provision of dispatch service.[90] Noting the significant benefits that would stem from permitting all CMRS licensees to provide dispatch services, most commenters requested that the Commission eliminate the prohibition immediately and without restriction.[91]

27. Several parties, however, urged the Commission to retain the dispatch prohibition. Many proponents of the prohibition argue that certain CMRS licensees, such as cellular providers, would chill competition by forcing small dispatch providers out of the market through below-cost pricing.[92] To the extent that CMRS licensees seek to offer dispatch service, commenters advocate that they do so on SMR frequencies.[93]

28. Several commenters request that if we elect to eliminate the prohibition, we phase it out on August 10, 1996 or allow non-SMR CMRS licensees to provide service only on a secondary basis.[94] As a separate matter, several commenters request the Commission to

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[88] *See, e.g.,* AirTouch Comments at 1; ALLTEL Comments at 3-4; Bell Atlantic Comments at 5-6; CTIA Comments at 4-5; East Otter Tail Comments at 6-7; Nextel Comments at 6-7 (supporting repeal after Aug. 10, 1996); PCIA Comments at 1-2; Rural Cellular Assoc. Comments at 3-4; SNET Mobility Comments at 8; and Sprint Comments at 1-3.

[89] *See* AirTouch Comments at 2; ALLTEL Comments at 2; Bell Atlantic Comments at 6; BellSouth Comments at 15-16; Century Comments at 11; East Otter Tail Comments at 6-7; GTE Comments at 6-7; McCaw Comments at 4-5; and TDS Comments at 7.

[90] *See* Bell Atlantic Comments at 5; NYNEX Comments at 9-10; and United Comments at 5.

[91] *See* AirTouch Comments at 4; ALLTEL Comments at 3; McCaw Comments at 3; Rural Cellular Comments at 4; and Bell Atlantic Comments at 6-7.

[92] NABER Comments at 5; AMTA Comments at 11-12; E.F. Johnson Comments at 3; and Geotek Comments at 4.

[93] ITA/CICS Comments at 6-7; and NABER Comments at 4-5, 7.

[94] Nextel Comments at 6-7; AMTA Comments at 10-12; and Geotek Comments at 4-5.

clarify that the dispatch prohibition did not extend to non-land mobile common carrier licensees.[95]

29. Decision. We amend our rules to permit all mobile service common carriers to provide dispatch service.[96] The record demonstrates that repeal of the dispatch ban will enhance competition and thereby provide consumers with expanded choice and lower prices. Moreover, we agree with commenters that retention of the ban is inconsistent with our efforts to establish a regulatory framework which provides similar services with symmetrical requirements. We also note that recent technological developments, including digitalization, have minimized any concerns that using common carrier spectrum for dispatch would impair the licensees' capacity to provide common carrier service because digital technologies allow spectrum to be used more efficiently. Because of the significant public benefits that we expect by eliminating the prohibition, we decline to impose a sunset provision and permit all CMRS licensees to provide dispatch upon the effective date of these rule changes, and without restriction.

30. In eliminating the dispatch prohibition, we expect to enhance competition by permitting new types of CMRS providers to enter the commercial dispatch service. We believe that increased competition in dispatch service will, in turn, yield significant public benefits. We note that there seems to be a scarcity of spectrum capacity available for dispatch service, as users below 512 MHz have strongly supported the Commission's proposals to make more efficient use of the spectrum in those bands and demand exists for most licenses

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[95] AirTouch Comments at 5 (stating that Congress did not intend to extend the dispatch ban to other than land mobile licensees and that mobile satellite services should thereby be allowed to provide dispatch services); Watercom Comments at 3 (urging the Commission to clarify that the dispatch prohibition is not applicable to maritime CMRS providers). We note that Watercom has also raised this issue in a Petition for Reconsideration of the *CMRS Second Report and Order*.

[96] By this action, we eliminate both the statutory prohibition on common carrier dispatch service and the prohibition on cellular dispatch that was contained in our rules prior to the enactment of the 1982 statutory ban. Our decision to eliminate the prohibition addresses concerns raised by Watercom and AirTouch that the dispatch prohibition does not apply to non-land mobile common carrier licensees. We note, however, that we agree with commenters that Congress did not intend to extend the dispatch ban to maritime and other non-land mobile licensees when it amended Section 332 in the Budget Act. We also note that we are not allowing cellular and other Part 22 licensees to provide stand-alone PMRS service, an issue that will be resolved on reconsideration of our *CMRS Second Report and Order*. *See CMRS Third Report and Order*, 9 FCC Rcd 7988 at ¶ 402. Rather, by this action we will permit Part 22 licensees to provide non-interconnected dispatch service, so long as their dispatch users also have the ability to utilize interconnected service if they choose.

in the 800 and 900 MHz bands.[97] Moreover, we agree with commenters that the introduction of new competitors has the potential to lower costs to subscribers, increase availability of choices, and improve the quality of service.[98] Several commenters maintain that allowing CMRS providers to provide dispatch in addition to other mobile services will satisfy consumers' growing demand for integrated services that are customized to fit their individual needs.[99] AirTouch notes, for example, that its market research reveals that consumers want service packages to include text messaging, vehicle location, alpha-numeric paging, fax, dispatch, and mobile voice.[100] In addition, we observe that eliminating the dispatch ban may lower the cost of multifunction equipment because a greater number of CMRS licensees will be able to provide dispatch service. Moreover, as McCaw and East Otter Tail suggest, eliminating the dispatch prohibition will make service available in areas where current options are limited.[101] In particular, we expect that the elimination of the dispatch prohibition will benefit rural communities by facilitating competition in underserved areas and will allow some rural subscribers to obtain low-cost dispatch service from a third-party service provider for the first time.[102]

31. Commenters seeking to retain the dispatch ban argue that allowing CMRS providers, particularly cellular licensees, to offer dispatch services actually would have an

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[97] *See Notice of Proposed Rule Making*, PR Docket No. 92-235, 7 FCC Rcd 8105 (1992).

[98] *See, e.g.*, AirTouch Comments at 1; ALLTEL Comments at 3-4; Bell Atlantic Comments at 5-6; CTIA Comments at 4-5; East Otter Tail Comments at 6-7; Nextel Comments at 6-7 (supporting repeal after Aug. 10, 1996); PCIA Comments at 1-2; Rural Cellular Assoc. Comments at 3-4; SNET Mobility Comments at 8; and Sprint Comments at 1-3.

[99] *See* AirTouch Comments at 3; Bell Atlantic Comments at 6; CTIA at 5-6; and NYNEX Comments at 10.

[100] AirTouch Comments at 3. Nextel has already launched a network in Los Angeles to provide digital integrated telephone, private network dispatch radio, and paging and messaging services. *See* "Nextel Starts Full Commercial Service in Southern California," *PCIA Bulletin*, May 20, 1994, at 10; "Nextel's Digital Network Has Commercial Service in Northern California," *Radio Communications Report*, July 18, 1994, at 27.

[101] McCaw Comments at 2; and East Otter Tail Comments at 6.

[102] *See* Rochester Comments at 3-4 (noting benefits that farmers and ranchers would receive as a result of dispatch service).

anti-competitive impact on the dispatch market.[103] Noting that cellular carriers have significant resources and spectrum, opponents claim that cellular carriers will impermissibly underprice their service (by subsidizing the dispatch service with cellular revenues) in order to drive SMR operators out of business. To prevent any anti-competitive conduct, several commenters suggest that all CMRS providers be required to provide dispatch on frequencies designated for SMR service.[104]

32. We are unpersuaded that any dispatch providers are likely to engage in anticompetitive conduct. To sustain a predatory pricing scheme, a dispatch provider must be able to price its services below its own costs and the costs of its competitors in order to drive competition out of the market. The dispatch provider must then raise its prices above a competitive level and effectively preclude potential competitors from entering or re-entering the market.[105] We consider this possibility highly unlikely because the entire CMRS market is expanding, with a number of competitors expected to enter the marketplace in the near term. As a result, the two cellular providers in each market are expected to compete with other CMRS service providers, including SMR and PCS licensees, in providing a host of services in addition to dispatch. These providers will also compete with private mobile radio service (PMRS) providers, including businesses that elect to operate their own systems, in the provision of dispatch service. It is therefore unlikely that cellular carriers would benefit by engaging in any anticompetitive pricing scheme for particular services in order to eliminate competitors. Rather, market share likely will be based on quality, price, and the availability of other service options to satisfy a customer's individual needs. We note, however, that we

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[103] NABER Comments at 5; AMTA Comments at 11-12; E.F. Johnson Comments at 2-3; and Geotek Comments at 4.

[104] NABER Comments at 4-5, 7; and ITA/CICS Comments at 6-7.

[105] In Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 588-89 (1986), the Supreme Court implied that speculation about predatory pricing, without more, does not state a case under the antitrust laws:

> [a]ny agreement to price below the competitive level requires the conspirators to forego profits that free competition would offer them. The foregone profits may be considered an investment in the future. For the investment to be rational, the conspirators must have a reasonable expectation of recovering, in the form of later monopoly profits, more than the losses they suffered. ... The future flow of profits, appropriately discounted, must then exceed the present size of the losses. ... [T]he success of such schemes is inherently uncertain; the short-run loss is definite, but the long-run gain depends on successfully neutralizing the competition. [Citations omitted.]

See also Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. __ (1993), 113 S. Ct. 2578 (1993).

will continue to study the dispatch market carefully and can take appropriate enforcement action if licensees engage in anticompetitive conduct. Moreover, we observe that the Department of Justice also has authority to take enforcement action against carriers that engage in predatory pricing.

33. We also do not believe that limiting dispatch service to SMR frequencies would be an efficient use of spectrum. To the extent that any CMRS providers have excess spectrum, we want to encourage them to develop innovative uses for it that are responsive to consumer demand, including dispatch service. Moreover, restricting dispatch service to SMR frequencies would limit competition by creating an artificial scarcity of spectrum available to provide dispatch service.

34. Permitting all CMRS licensees to provide dispatch service also is consistent with our efforts to achieve regulatory symmetry among comparable services. As many commenters point out, the dispatch prohibition allows SMR licensees to offer services that its CMRS competitors cannot.[106] Elimination of the dispatch prohibition will help to equalize the regulatory requirements applicable to all mobile service providers by allowing competing operators to offer the same portfolio of service options and packages. This result is required by Congress' mandate that comparable mobile services receive similar regulatory treatment.

35. In addition, we note that recent technological developments undermine the original justification for the dispatch prohibition. When Congress adopted the dispatch prohibition, it sought to ensure that common carriers did not misuse frequencies by devoting them to dispatch use.[107] The development of new technologies, including digitalization, have minimized any concerns that using common carrier spectrum for dispatch would impair the licensees' capacity to provide common carrier service because digital technologies allow spectrum to be used more efficiently.[108] Moreover, the mobile services marketplace will ensure that spectrum is not used inefficiently for dispatch service if consumer demand demonstrates that alternative uses are more desirable.

36. Because of the significant public benefits that we expect by eliminating the prohibition, we decline to impose a sunset provision and permit CMRS licensees to provide

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[106] *See* AirTouch Comments at 2; ALLTEL Comments at 2; Bell Atlantic Comments at 6; BellSouth Comments at 15-16; Century Comments at 11; East Otter Tail Comments at 6-7; GTE Comments at 6-7; McCaw Comments at 4-5; and TDS Comments at 7.

[107] *See* H.R. Rep. No. 765, 97th Cong., 2d Sess. 55-56 (1982). We note that some common carrier dispatch is available because Congress provided that licensees offering dispatch prior to January 1, 1982 could continue to do so. Accordingly, our rules provide for this limited amount of common carrier dispatch. *See, e.g.*, 47 C.F.R. § 22.2 (1993).

[108] *See* Bell Atlantic Comments at 5; NYNEX Comments at 9-10; and United Comments at 5.

dispatch without restriction. We agree with commenters that establishing a sunset period would delay the introduction of new competition without providing any benefit to consumers.[109] Commenters favoring a sunset period maintain that they need an opportunity to adjust to common carrier obligations without disruption by new competitors.[110] We note, however, that our intent in establishing the three-year transition period was to provide private carriers that will be reclassified as CMRS an opportunity to prepare for new regulatory requirements, not to shield them from new sources of competition. We are unpersuaded, therefore, that a sunset provision is needed to protect SMR licensees. Moreover, we observe that to the extent that non-SMR CMRS licensees will need to construct or modify their systems before they will be able to offer dispatch services, SMR providers will have an opportunity to adjust to new competitors. We also decline to limit non-SMR CMRS licensees' participation to providing dispatch on a secondary basis. There is no evidence in the record that restricting their participation in this manner would provide any benefit to consumers.[111]

IV. PROCEDURAL MATTERS

37. Final Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* in GN Docket No. 94-90. Written comments on the IRFA were requested, although none were received. The Final Regulatory Flexibility Analysis (FRFA) is contained in Appendix C to this *Order*.

38. Ordering Clauses. Accordingly, IT IS ORDERED, that Part 22 of the Commission's Rules ARE AMENDED as set forth in Appendix A and are effective 30 days after publication in the Federal Register. It is FURTHER ORDERED that Part 90 of the Commission's Rules ARE AMENDED as set forth in Appendix A and are effective upon publication in the Federal Register.[112]

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[109] AirTouch Comments at 4; ALLTEL Comments at 3; McCaw Comments at 3; Rural Cellular Comments at 4; and Bell Atlantic Comments at 6-7.

[110] AMTA Comments at 10-12; Geotek Comments at 4-5; and NABER Comments at 6-7.

[111] AMTA is the only commenter that favors this limitation on common carrier participation. *See* AMTA Comments at 12. AMTA argues that restricting cellular licensees' participation in the provision of dispatch services will minimize the anticompetitive effects on the market. However, as discussed *supra* at ¶¶ 30, 32, we have already concluded that cellular participation would promote, not impede, competition.

[112] We note that the Administrative Procedure Act allows the rules to become effective immediately because we are relieving a restriction rather than imposing one. *See* 5 U.S.C. § 553(d)(1). We believe that it is appropriate for these rules to take effect immediately upon

39. IT IS FURTHER ORDERED that the Petitions for Waiver filed by Southwestern Bell, Bell Atlantic, US West, RAM Mobile, Cass Cable, and API ARE DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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publication in the Federal Register in light of the pending requests for waiver, discussed *supra*.

APPENDIX A

Rule Changes

Parts 22 and 90 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

Part 22 -- Public Mobile Service

1. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, 307, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307 and 332, unless otherwise noted.

2. Section 22.577 is amended by revising the headnote, the introductory text, the introductory text of paragraph (a), the text of paragraphs (a)(1), (a)(2), (b) and (d), to read as follows:

§ 22.577 Dispatch service.

Carriers licensed under this subpart may provide dispatch service in accordance with the rules in this section.

(a) Installation without prior FCC approval. A station licensee may install or remove dispatch points for subscribers without obtaining prior FCC approval. A station licensee may install or remove dispatch transmitters for subscribers without applying for specific authorization, provided that the following conditions are met.

(1) Each dispatch transmitter must be able to transmit only on the mobile channel that is paired with the channel used by the base station.

(2) The antenna of the dispatch transmitter must not exceed the criteria in § 17.7 of this chapter that determine whether the FAA must be notified of the proposed construction.

* * * * *

(b) Notification. Licensees must notify the FCC (FCC Form 489) whenever a dispatch transmitter is installed pursuant to paragraph (a) of this section. The notification must include the name and address of the subscriber(s) for which the dispatch transmitter was installed, the location of the dispatch transmitter, the height of antenna structure above ground and above mean sea level, the channel(s) used, and the call sign and location of the base station.

* * * * *

(d) Dispatch transmitters requiring authorization. A dispatch transmitter that does not meet all of the requirements of paragraph (a) of this section may be installed only upon grant of an application for authorization therefor (FCC Form 600).

* * * * *

3. Section 22.901 is amended by revising paragraph (c) to read as follows:

§ 22.901 Cellular service requirements and limitations.

* * * * *

(c) Dispatch service. Cellular systems may provide dispatch service.

* * * * *

Part 90 -- Private Land Mobile Radio Services

4. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

5. 47 C.F.R. § 90.603 is amended by deleting paragraph (c).

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6. 47 C.F.R. § 90.703 is amended by deleting paragraph (c).

APPENDIX B

List of Commenters and Reply Commenters

Commenters

AirTouch Communications (AirTouch)
ALLTEL Mobile Telecommunications, Inc. (ALLTEL)
American Mobile Telecommunications Assoc., Inc. (AMTA)
Bell Atlantic Mobile Systems, Inc. (Bell Atlantic)
BellSouth Corp. (BellSouth)
Cellular Telecommunications Industry Assoc. (CTIA) (late filed)
Century Telephone Enterprises, Inc. (Century)
E.F. Johnson Co.
East Otter Tail Telephone Co. (East Otter Tail)
Geotek Communications, Inc. (Geotek)
GTE Service Corp. (GTE)
Industrial Telecommunications Assoc., Inc. and Council of Independent Communications Suppliers (ITA/CICS)
McCaw Cellular Communications, Inc. (McCaw)
National Assoc. of Business and Educational Radio, Inc. (NABER)
Nextel Communications, Inc. (Nextel)
NYNEX
Pacific Bell
Personal Communications Industry Assoc. (PCIA)
Polar Communications Mutual Aid Corp. (Polar)
Puerto Rico Telephone Co. (PRTC) (errata filed 10/14)
RAM Mobile Data USA L.P. (RMD)
Rochester Tel Cellular Holding Corp. (Rochester)
Rural Cellular Association (RCA)
Rural Independents
Southwestern Bell Corp. (Southwestern Bell)
SMR WON
SNET Mobility, Inc. (SNET)
Sprint Corporation (Sprint)
Telephone and Data Systems, Inc. (TDS)
United States Telephone Assoc. (USTA)
United Telephone Mutual Aid Corp. (United)
Waterway Communications System, Inc. (Waterway)

Reply Commenters

American Mobile Telecommunications Assoc., Inc. (AMTA) (late filed)
BellSouth Corp. (BellSouth)
Consolidated Communications Corp. (Consolidated)
East Otter Tail Telephone Co. (East Otter Tail)
National Assoc. of Business and Educational Radio, Inc. (NABER)
National Telephone Cooperative Assoc. (NTCA)
Nextel Communications, Inc. (Nextel)
Personal Communications Industry Assoc. (PCIA)
Polar Communications Mutual Aid Corp. (Polar)
RAM Mobile Data USA L.P. (RMD)
Southwestern Bell Corp. (Southwestern Bell)
Sprint Corporation (Sprint)

APPENDIX C

Final Regulatory Flexibility Analysis

Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the expected impact of the proposed rule changes on small entities.

I. Reason for Action. This *Report and Order* eliminates the restrictions contained in Sections 90.603(c) and 90.703(c) of the Commission's rules that prohibit wireline telephone common carriers from holding licenses in the SMR service and commercial 220 MHz band. The *Report and Order* also permits all CMRS providers to offer dispatch service in competition with SMR systems. The record in this proceeding demonstrates that these restrictions are no longer necessary and should be repealed.

II. Objectives. The Commission intends to promote competition, growth and innovation at a time when the mobile services marketplace is undergoing regulatory changes.

III. Legal Basis. The action is authorized under Sections 3(n), 4(i), 303(r), 332(c) and 332(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(n), 154(i) and 303(r), 332(c) and 332(d).

IV. Reporting, Recordkeeping and Other Compliance Requirements. None.

V. Federal Rules Which Overlap, Duplicate or Conflict With Rules. None.

VI. Description, Potential Impact, and Number of Small Entities Involved. Many small entities could be affected by the rule changes contained in the *Report and Order*. We expect that several small entities will benefit by eliminating the wireline restrictions and dispatch prohibition because it will provide these entities an additional opportunity to participate in the provision of these services.

VII. Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives. The *Notice* in this proceeding solicited comments on whether to eliminate the wireline eligibility restrictions and the dispatch prohibition. No significant alternatives were presented in the comments.

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 95-143
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Concerning	)	
Children's Television Programming	)	MM Docket No. 93-48
	)	
Revision of Programming Policies	)	
for Television Broadcast Stations	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: April 5, 1995 Released: April 7, 1995

By the Commission: Commissioner Quello issuing a statement; Commissioner Barrett concurring in part, dissenting in part and issuing a statement; Commissioners Ness and Chong issuing separate statements.

Comment Date: June 16, 1995
Reply Comment Date: July 17, 1995

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I. SUMMARY

1. Congress enacted the Children's Television Act of 1990 ("CTA") to "increase the amount of educational and informational broadcast television programming for children."[1] In the CTA, Congress specifically found, inter alia, that "television can assist children to learn important information, skills, values and behavior, while entertaining them and exciting their curiosity to learn about the world around them," and that "as part of their obligation to serve the public interest, television station operators and licensees should provide programming that serves the special needs of children."[2] Congress was concerned, however, that market forces had produced "disturbingly little" educational and informational programming for children.[3]

2. Congress observed that "it is well established that in exchange for 'the free and exclusive use of a valuable part of the public domain,' a broadcaster can be required to act

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[1]Children's Television Act of 1989, Senate Committee on Commerce, Science and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess. 1, 9 (1989) ("Senate Report").

The other provisions of the CTA, those intended to protect children from overcommercialization of programming, are not at issue in this proceeding.

[2]Children's Television Act of 1990, Title I, sec. 101.

[3]Senate Report at 7.

as a public fiduciary, obligated to serve the needs and interests of its area."[4] Congress further stated that "[a]s a part of public interest obligation, broadcasters can and indeed must be required to render public service to children."[5] As a consequence, Congress directed the Commission to review, in any application for license renewal, whether a television broadcast licensee had "served the educational and information needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."[6]

3. The Commission adopted rules implementing the CTA in 1991.[7] In 1993, the Commission, in light of its experience in reviewing more than 320 television license renewals, began an inquiry to examine whether our rules should be revised. Based on that inquiry, this Notice of Proposed Rule Making proposes changes to our rules to make them as clear as possible to facilitate licensee compliance with the CTA, and to strengthen the functioning of the children's television marketplace.

4. In developing these proposed changes, the Commission has followed three principles. The first principle is that judgments of the quality of a licensee's programming, educational or otherwise, are best made by the audience, not by the federal government. To enable audiences to make these judgments, the Commission must ensure that key members of the market – e.g., parents – receive the information they need to participate in a meaningful fashion. Therefore, we propose to require broadcasters to identify educational programming in materials provided to publishers of television schedules, and to improve the quality of, and public access to, the information broadcasters make available regarding their efforts in providing children's programming.

5. By improving the information available to parents and local communities, we can enable them to be better informed consumers, influencing the market through their choices. With better information, parents, educators, and child advocacy groups also can more effectively use community-based efforts to seek changes in children's programming without resorting to governmental intervention. These groups also can be more effective in facilitating enforcement of the CTA.

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[4]Children's Television Act of 1989, House Committee on Energy and Commerce, H. Rep. 385, 101st Cong., 1st Sess. 1, 10 (1989) ("House Report").

[5]Id.; Senate Report at 16.

[6]47 U.S.C. § 303b(a)(2).

[7]Report and Order, In the Matter of Policies and Rules Concerning Children's Television Programming and Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, MM Docket Nos. 90-570 and 83-670, 6 FCC Rcd 2111 ("Report and Order"), recon. granted in part, 6 FCC Rcd 5093 (1991) ("Memorandum Opinion and Order").

6. The second principle the Commission has followed is that our rules and processes should be as clear, simple, and fair as possible. To this end, we believe that we should revise our definition of "educational and informational" programming. The current definition is ambiguous and therefore fails to give licensees clear guidance. Indeed, some licensees have interpreted this definition to include general audience news and game shows. Moreover, we have never defined what constitutes programming "specifically designed" to serve children's educational and informational needs, even though the CTA expressly requires each licensee to provide such programming. We are concerned that this lack of clarity has led to less than optimal compliance with the goals of the CTA. We are concerned that, unless we provide greater specificity, noneducational programming could drive educational programming off the air.

7. While we believe that our proposals to ensure that the public has greater access to information and to clarify the definition of educational and informational programming are important steps toward promoting the goals of the CTA more effectively, we are concerned that these efforts may not suffice to serve the educational and informational needs of children, and to bring about the kind of measurable increase in such programming contemplated by Congress. Accordingly, we also propose to take one of the following three types of action:

(1) Monitor the amount of broadcasted programming specifically designed to serve the educational and informational needs of children for a specified period of time (e.g., three years) to determine whether our efforts to increase the flow of information to the public and clarify our rules have caused a significant increase in such programming. Stations would be required to submit annual descriptions of their educational and informational programming. At the end of the specified period, the Commission would assess the need for further regulatory action.

(2) Establish a "safe harbor" quantitative processing guideline, which would specify an amount of programming specifically designed to serve the educational and informational needs of children (e.g., 3 hours per week or 3 increasing to 5 hours per week) that would represent one means of satisfying the CTA's programming obligation and permit staff approval of the children's programming portion of a license renewal application.

(3) Establish a programming standard – i.e., a rule – that would require broadcasters to air a specified average number of hours (e.g., 3 hours per week or 3 increasing to 5 hours per week) of programming specifically designed to serve the educational and informational needs of children, or demonstrate that the programming they did air, along with other programming-related activities in their market, served the educational and informational needs of children as well as or better than providing an additional amount of programming specifically designed to serve those needs.

As explained more fully below, we seek comment on whether, if we adopt either a processing guideline or a programming standard, the regulation should be sunsetted by December 31, 2004. Such a measure would ensure that the Commission undertakes a review of either type of regulation before that date.

8. The Commission's third principle is that broadcasters should be guided by market forces, to the greatest extent possible, in determining whether they meet their programming obligation by airing shows themselves, or by sponsoring programming aired on other stations. The program sponsorship concept, most relevant to the options of adopting processing guidelines or programming standards, would permit a broadcaster to better utilize other stations' children's programming expertise, would allow some stations to develop audience identification and programming schedules that build child audiences, and could stimulate growth in the production of educational and informational programming, all while reducing disincentives to airing such programming. We do not believe, however, that the CTA permits a licensee to satisfy its programming obligation entirely through sponsorship arrangements. Thus, whatever action we ultimately take in this area, a licensee would not, in fulfilling its obligations under the CTA, be permitted to rely completely on programming it sponsored to air on other stations.

II. BACKGROUND

A. The Current State of Children's Television Programming

9. American children spend considerable time watching television. Recent data show that children from 2 to 17 watch on average more than 3 hours of television each day.[8] By the time most children reach the age of 18, it is estimated that they will have watched between 15,000 and 20,000 hours of television. In contrast, they will have

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[8]The data also indicate that children ages 6 to 17 watch the most television during prime time. For children 2 to 5 years old, the most popular viewing time period is 10:00 a.m to 4:00 p.m. Monday through Friday, with prime time the second most popular. Television Audience 1993, at 14, Nielsen Media Research, 1993. These figures reflect all television viewing, regardless of station type, except for VCR playback. However, information regarding the breakdown of these figures among different media (e.g., over-the-air, cable, MMDS) is not available.

spent less than 13,000 hours in the classroom.[9] Moreover, many children watch television before they are exposed to any formal education.[10]

10. In enacting the CTA, Congress declared that "[o]ur children are this nation's most valuable resource, and we need to pay special attention to their needs."[11] At the same time, Congress recognized that many children lack basic reading, math, and other skills.[12] As noted above, Congress concluded that television has the capacity to benefit society by helping to educate and inform our children.[13] Indeed, studies show that television programs can effectively teach children specific skills. Children who watch "Sesame Street" and "Mister Roger's Neighborhood," for example, have been shown to learn the concepts and skills taught on those programs,[14] and to have enhanced attentional and perceptual abilities.[15] Television can also help prepare children for formal schooling and supplement skills taught in the classroom, and is especially effective when designed to focus on particular age groups.[16] Finally, television can be used effectively to convey important and positive messages about social behavior.[17]

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[9]See Senate Report at 5. See also House Report at 5. Children usually begin watching television before they start school, and they watch on weekends and during the summer when they are not in school.

[10]See Senate Report at 5.

[11]Id.

[12]Id.

[13]See supra para. 1 (citing Children's Television Act of 1990, Title I, Sec. 101).

[14]See Senate Report at 6 (citing Huston, Watkins and Kunkel, Public Policy and Children's Television, American Psychologist, February, 1989 ("Huston et al.")). We are aware as well that some researchers have questioned the "learning gain" of children who watch "Sesame Street." See, e.g., Sorry, Ernie. TV Isn't Teaching, New York Times, November 12, 1994. Nonetheless, based on other studies and evidence, Congress has determined that children benefit in important ways from viewing educational and informational programming.

[15]See Milton Chen, Six Myths About Television and Children, Media Studies Journal, Fall 1994, at 108-09 (citing Dr. Daniel Anderson, Professor of Psychology, University of Massachusetts, Amherst).

[16]See, e.g., Senate Report at 6.

[17]See Huston et al. at 425-26.

11. Recent surveys of children confirm the powerful impact television has on them. In a nationwide survey of 750 children ages 10 to 16, more than one-third said they "often" want to try things they see on TV, and two-thirds said their contemporaries are influenced by what they see on TV.[18] These surveys reaffirm what the Office of Technology Assessment stated in 1990: "[c]ommunication is the process by which culture is developed and maintained," and "[c]ulture can be thought of as the 'glue,' the shared values and practices, that holds a society together."[19]

12. As noted above, however, Congress also found that market forces alone have produced "disturbingly little" educational and informational programming on commercial television,[20] that market forces were not "sufficient to ensure that commercial stations provide educational and informational programming,"[21] and that government action to increase the availability of such programming therefore is required.

B. The FCC's Rules and Current Proceeding

13. The CTA imposes an affirmative obligation on broadcast television stations to serve the educational and informational needs of children through not only their "overall programming," but also programming "specifically designed" to serve children's needs.[22] The CTA also authorizes the Commission, as part of its license renewal review process, to consider any special nonbroadcast efforts by the licensee that enhance the educational and informational value of programming to children, and any special efforts by the licensee to produce or support programming specifically designed to serve the educational and informational needs of children that is broadcast by another station in the licensee's market.[23] Our current rules generally incorporate the language of the

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[18]The surveys also illustrated television's impact on children through their own stated concerns regarding the values portrayed on television, with over 60 percent of the children surveyed saying that television encourages such negative values as disrespect for their parents and having sex when they are too young, and 82 percent of the children surveyed saying that television should teach right from wrong. Sending Signals: Kids Speak Out About Values in the Media (a Children Now Poll Conducted by Fairbank, Maslin, Maulin & Associates (1995)).

[19]U.S. Congress, Office of Technology Assessment, Critical Connections: Communication for the Future, 181, 182 (1990).

[20]Senate Report at 7, 9.

[21]Id. at 9.

[22]47 U.S.C. § 303b(a)(2).

[23]47 U.S.C. § 303b(b)(1) & (2).

statute and also define educational and informational programming as "programming that furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs."[24] In addition, we require broadcasters to air some amount of standard-length educational and informational programming specifically designed for children 16 years of age and under.[25] We have adopted no other guidelines regarding the types of programming that may contribute to satisfying a station's renewal review requirement, and our rules contain no requirement as to the number of hours of educational and informational programming that stations must broadcast or the time of day during which such programming may be aired.

14. After developing some experience with our implementation of the CTA's regulatory scheme, we initiated this proceeding with a Notice of Inquiry ("NOI") in 1993 "to seek comment on whether and in what manner our rules and policies might be revised to more clearly identify the levels and types of programming necessary in the long term to adequately serve the educational and informational needs of children."[26] Based on an informal review of more than 320 license renewal applications, we did not believe at that time that the level of educational programming performance was consistent with the CTA's long-term objectives. Concluding that the apparent lack of growth in children's educational programming might be largely attributable to broadcasters' uncertainty regarding the scope of their obligation, we sought comment in our NOI on whether: (1) in establishing compliance with the CTA, licensees should rely primarily on standard-length programming that is specifically designed to serve the educational and informational needs of children, and only secondarily on short-segment programming; and (2) the "primary" objective of qualifying "core" programming should be educational and informational, with entertainment as a secondary goal.[27] We also sought comment on whether, to provide licensees with clearer guidance and to facilitate the license renewal review process, the Commission should adopt staff processing guidelines specifying an amount and type of children's programming that would permit staff approval of the children's programming portion of license renewal applications.[28]

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[24]47 C.F.R. § 73.671 Note.

[25]See Report and Order,, 6 FCC Rcd at 2115; Memorandum Opinion and Order, 6 FCC Rcd at 5100.

[26]Notice of Inquiry in MM Docket No. 93-48, 8 FCC Rcd 1841, 1841 (1993). We received 29 formal comments and 13 formal reply comments in response to our NOI. A list of the parties filing these comments is contained in Appendix A.

[27]Id. at 1842.

[28]Id. at 1843.

15. In June 1994, we convened an en banc hearing on the subject of children's television programming. Twenty-nine panelists gave oral presentations to the full Commission on three topics: (1) "Educational and Informational Programming: Will We Know It When We See It?"; (2) "Educational and Informational Programming: How Much Is Enough?"; and (3) "The Economics of Providing Educational and Informational Programming for Children." The panel participants also submitted written comments addressing these issues, as did other interested parties.[29]

16. Parties responding to our NOI and commenting in connection with our en banc hearing submitted studies both challenging and supporting our tentative finding that there had been little change in the amount of available educational and informational programming since passage of the CTA. According to a station survey submitted by the National Association of Broadcasters ("NAB"), which purported to show an increase in such programming, the average commercial station aired slightly more than 2 hours per week of regularly scheduled, standard-length children's educational programming in the fall of 1990 and 3.6 hours per week of such programming in the fall of 1993.[30] According to a survey of member stations conducted by the Association of Independent Television Stations, Inc. ("INTV"), which also claimed that the amount of educational programming had increased, the average independent station aired 4.64 hours per week

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[29]See En Banc Hearings on Children's Television in MM Docket No. 93-48, June 28, 1994. In addition to the testimony and comments submitted by hearing panelists, we received eight formal comments in connection with the en banc hearing, and ten formal replies. A list of the hearing participants and parties submitting these comments is contained in Appendix B.

Following the release of our NOI and our en banc hearing, we received more than 500 informal comments, including letters from individual members of the public, favoring one or more of the rule changes suggested in our NOI. In addition, we received hundreds of letters from the public generally supporting stricter rules governing children's educational and informational television programming, and 23 letters from the public generally opposing stricter rules governing such programming.

[30]See NAB En Banc Reply Comments at 2-4 and Attachment 1. NAB asked commercial television stations to list their children's programming that met the following definition: programming originally produced and broadcast for an audience of children 16 years of age and younger which serves their cognitive/intellectual or social/emotional needs. (Although NAB styled this document "Comments," it is referred to herein as Reply Comments because it was filed on the deadline for reply comments and responds to comments filed by other parties.)

of regularly scheduled, standard-length educational programs in the first quarter of 1994.[31] In a study of license renewal applications filed in 1992, Dr. Dale Kunkel of the University of California, Santa Barbara, found that stations reported airing on average 3.4 hours per week of regularly scheduled, standard-length programming specifically designed to meet children's educational needs, but he concluded that this figure is likely to be inflated because it accepts at face value station claims as to the educational value of programs, and because many of the programs identified by stations were of dubious educational value to children.[32] Squire Rushnell, former Vice President of Children's Television for ABC from 1973 to 1989, performed a study comparing the amount of children's educational and informational programming produced by networks in the years 1975, 1980, 1985, and 1990, as well as plans for the then upcoming 1994/95 season. Rushnell's results show that in 1975 the three commercial networks were presenting a combined average of 9-3/4 hours per week of children's programs specifically designed as educational. In 1980, this figure rose to 11-1/4 hours per week, but by 1990 had fallen to 1-3/4 hours. Projections for the 1994/95 season showed that three commercial networks (ABC, NBC, and CBS) would present a combined weekly average of 5-3/4 hours of educational children's programming. With the addition of Fox, the weekly average would increase to 9 hours.[33]

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[31]See INTV En Banc Reply Comments at 2-3 and Appendix A at 5-7. INTV's survey of its member stations included both non-affiliated independent stations and Fox-affiliated independent stations. Unlike NAB, INTV did not ask respondents to report programming conforming to a precise definition, but, rather, asked them to list all programs broadcast during the first quarter of 1990 and the first quarter of 1994 that the stations believed satisfied the FCC's requirements to provide programming that met the educational and informational needs of children. According to INTV's results, respondents reported airing 42 such programs per week during the first quarter of 1990, and 322 such programs per week during the first quarter of 1994. However, INTV did not supply an average number of hours per week for the first quarter of 1990.

INTV also conducted a study of market clearances (i.e., times a program aired in a market) of syndicated children's educational programs which showed that from 1990 to 1993 the number of such market clearances increased from 576 to 1,746. INTV states that its study of market clearances included only programs it believed were "unquestionably" educational and informational and provided a list of these programs. See INTV En Banc Reply Comments, Appendix A, at 2-4.

[32]Kunkel NOI Comments at 3-4, 6-7. Dr. Kunkel's study contains a list of programs identified by stations as specifically designed to meet children's educational needs, which include programs such as "G.I. Joe," "Teenage Mutant Ninja Turtles," "The Jetsons," and "Full House." Id., Table 2.

[33]Squire Rushnell En Banc Comments.

17. After careful review of these studies, as well as all other information regarding the availability of educational broadcast programming provided in response to our NOI and in connection with our en banc hearing, we find that this evidence is insufficient to support a conclusion as to whether or not the educational and informational needs of children are being met, including whether the CTA and our existing regulations have precipitated a significant increase in the amount of children's educational and informational programming carried by commercial broadcasters. In particular, none of the studies submitted enables us to determine accurately what amount of programming specifically designed to educate and inform children is currently being aired by commercial stations.

18. Indeed, the usefulness of all of the studies submitted is limited. Like Dr. Kunkel's study, the station surveys submitted by both the NAB and INTV accept at face value station claims as to the educational content of their programming. Our experience with such face value claims calls into question the reliability of the results presented and the amount of programming on the air they would purport to document. A cursory review of children's programming reports submitted as part of license renewal applications reveals that broadcasters have misidentified certain programs as contributing to their compliance under the CTA.[34] Others who have reviewed the programming some stations have claimed as educational have found that a significant number of claimed programs were inappropriate, which further supports the suggestion that the figures produced by the above studies may be inflated. The Center for Media Education, filing jointly with other parties ("CME et al."), submitted results of a review of commercial television license renewal applications which it conducted with the Institute for Public Representation of the Georgetown University Law Center in 1992. Based on this study and continued review of license renewal applications, CME found that many stations were listing in their applications programs with no educational content, and concluded that most broadcasters were not increasing the number of hours they devote to children's educational programming.[35] In addition, the stations that chose to respond to the NAB and INTV surveys may have made a more significant effort to provide educational programming than those that did not respond, which may have resulted in an

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[34]Such programs include, for example, "Super Mario Brothers" and "Slimer–The Real Ghostbusters." Other stations have claimed credit for their general audience news programming or game shows such as "Wheel of Fortune." The NAB and INTV studies did not identify the specific programs reported as "educational" in their survey results.

[35]See CME et al. NOI Comments at 3-5 and Appendix A-1. (CME submitted its NOI Comments and Reply Comments, and its En Banc Reply Comments, in conjunction with a number of other organizations, which are identified in Appendixes A and B.) NAB challenged CME's conclusions, arguing that the renewal applications reviewed were filed only shortly after the Commission's children's programming rules became effective, at a time when stations had had little opportunity to adjust to the new requirements. See NAB En Banc Reply Comments at 10.

overstatement of the effort being made by commercial television broadcasters overall.[36] Although INTV did include the list of programs reflected in its study of market clearances, this study is limited to syndicated programming. Squire Rushnell's study, on the other hand, is limited to network programming. Moreover, NAB points out several problems that it believes exist with the Rushnell study, including use of an incorrect amount of educational and informational programming for both 1980 and the 1994/95 season, and notes that stations affiliated with the networks today air a considerable amount of non-network educational and informational programming for children.[37]

19. Even if we accept the conclusion drawn by some parties that the amount of educational programming on the air has increased since implementation of our rules, the degree of that increase appears to be quite modest at best. Thus, we are not convinced that our current rules are prompting an adequate response to the CTA. Accordingly, we feel that it would be desirable to precipitate a more substantial and significant increase in the amount of children's educational and informational programming – in particular, programming specifically designed to educate and inform children – in the future. As discussed more fully below, we tentatively conclude that the first steps toward achieving this goal should be the following: (1) to take measures to improve the flow of programming information to the public, and (2) to adopt a definition of programming specifically designed to serve children's educational and informational needs. In addition, we believe that further action is needed to ensure an adequate supply of programming specifically designed to meet children's educational and informational needs. However, as indicated above, the record compiled thus far is inconclusive with respect to what form that action should take, and we therefore seek comment below on a range of options.

20. In conjunction with the description and analysis of each of the proposals and options described more specifically below, we must reiterate to all interested parties the importance of providing us with information and studies in addition to those already submitted, as well as analysis of any useful information or studies already on record. Of obvious importance are materials documenting changes in the nature and amount of children's programming, especially recently. In providing such studies and analysis, commenters should bear in mind the various infirmities that we have already found that limit the utility of the material already presented to us in this inquiry. Such information could be of utmost significance in assisting us in designing rules that achieve the goals of

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[36]CME et al. criticized the NAB study on this ground among others. See CME et al. En Banc Reply Comments at 4-7 and Appendix.

[37] See NAB En Banc Reply Comments, Attachment 5. The results of other studies submitted also have limitations. For example, that of the South Florida Preschool PTA (see South Florida PTA NOI Comments), which claims that the amount of educational programming aired by commercial stations in the area it surveyed is insufficient, is limited in geographical scope.

the CTA. Finally, we note that if data were submitted that show that the educational and informational needs of children are being met consistent with the goals of the CTA, we would reassess the need for further action.[38]

III. PROPOSED REVISIONS OF CHILDREN'S PROGRAMMING REQUIREMENT

A. Improving the Flow of Information to the Public to Facilitate Enforcement of the CTA

21. As stated above, one principle we intend to apply in this proceeding is that programming quality judgments are best made by the audience, not the government. Here, commenters have convinced us that one way to ensure that Commission licensees provide sufficient amounts of children's educational programming to comply with the CTA is to facilitate the ability of the public, especially parents, to interact in the market

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[38]We also note in this context that, under our present policy, we require the licensee to submit at renewal time the summary of its programming response and other efforts directed to the educational and informational needs of children that it maintains in its public file. Report and Order, 6 FCC Rcd at 2116. We have further specified that such records should include programming specifically designed to serve children's educational and informational needs and should indicate, at a minimum, the time, date, duration and a brief description of the program or nonbroadcast effort the licensee has made. 47 C.F.R. § 73.3526(a)(8)(iii); Report and Order, 6 FCC Rcd at 2116. See also Memorandum Opinion and Order, 6 FCC Rcd at 5102 ("[C]ommercial licensees must submit all of their children's program lists at renewal time. . . . Interested members of the public have the right to know the basis for a claim that a station has met the educational and informational needs of children.") Dr. Kunkel, in his study of license renewal applications filed in 1992, found that more than a quarter of all stations failed to comply with these reporting requirements. More than one-fifth of stations did not identify any of their claimed educational content as "specifically designed for children," while others submitted only lists of their children's program titles, omitting other related information such as days and times of broadcast or providing no content descriptions. Kunkel NOI Comments at 1, 3-7. We emphasize that we expect our licensees to comply with our reporting requirements.

and in the regulatory process.[39] It is only through parental involvement that the CTA will be successful.

22. In administering the CTA, we do not believe that it is necessary for the Commission to evaluate the quality of children's programming if the public has sufficient opportunity – through information – to play an active role in assuring that the ultimate goals of the statute are achieved. Providing this opportunity accomplishes two things. First, it allows the Commission to rely more on marketplace forces as a critical mechanism for achieving the goals of the CTA. For example, if parents have the opportunity to know in advance that a particular program has an educational and informational focus, and when such programs will be shown, they can encourage their children to watch such programming and thereby increase audience, ratings, and the incentive of broadcasters to air, and programmers to supply, more of such programming. We note that television research indicates generally that parents act on their objections to television programs and that programming information could help parents influence the shows viewed by children. Indeed, one recent study examines the impact of viewer advisories on a particular subset of programs which carried such advisories, specifically prime time movies shown on network television between 1987 and 1993.[40] Similarly, easy access to information about a station's past and planned performance in this area would permit the public to exercise its market prerogatives more effectively by facilitating viewing campaigns and related efforts to influence station performance by coordinating contacts with the station and its advertisers, and by otherwise bringing community pressure to bear. Indeed, given the available evidence that parents do use information to exercise their market prerogatives, we believe that the current

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[39]The American Psychological Association ("APA"), which proposed in response to our NOI the empowerment of the public through information, indicated that better programming information, and in particular advance notice of educational programs, would assist parents in selecting programs for their children. APA NOI Comments at 5-6. Dr. Kunkel and The National PTA, too, advocated such advance notice to help parents make programming choices. Kunkel NOI Reply Comments at 17-19; The National PTA En Banc Comments at 14-15.

[40]See Hamilton, Marketing Violence: The Impact of Labeling Violent Television Content, Dewitt Wallace Center for Communications and Journalism Working Paper Series, Terry Sanford Institute of Public Policy, Duke University, December 1994. This study indicates, using a regression analysis compensating for external factors such as scheduling, promotion, and content and program preferences of various demographic groups, that viewing among children 2 to 11 was statistically significantly lower for movies carrying viewer discretion advisories. These results provide, among other things, statistical support from ratings data for the conclusion that parents do act upon information contained in program advisories to discourage the viewing of violent or otherwise objectionable programming among children.

insufficiency of over-the-air educational programming may be attributable, at least in part, to the dearth of programming information in the marketplace.

23. As the APA has also pointed out, the second thing that increasing the flow of information to the public should accomplish is to faciliate enforcement of the CTA.[41] Parents, educators, and grass roots groups can play a more effective role in both the renewal process and in ongoing monitoring efforts during the course of a station's license term if information about a station's efforts in programming for children is made readily available and understandable.

24. Accordingly, we tentatively conclude that stations should be required to identify programs specifically designed to serve the educational and informational needs of children at the time they are aired, and, to the extent that programs are scheduled, that licensees should provide such identifying information to program guide publishers. Not only would this information facilitate public involvement as discussed above, but it also appears to us that stations could use this as an opportunity for promoting their educational programs. We believe that such identifications need not consume large amounts of print or air time, and that they could be as simple as an icon.[42] We ask commenters not only to address this specific proposal and how it could be implemented, but also to propose any other methods for informing the public of upcoming children's educational and informational programming.

25. We also seek comment on how we can improve the public's ability to monitor a licensee's specific efforts to provide more programming specifically designed to serve the educational and informational needs of children. At present, licensees are required to compile reports, on an annual or quarterly basis (at the licensee's discretion), containing information about the children's programming they air, including the time, date, duration and description of the programs.[43] These reports must be maintained in the station's public inspection file. There appear to be a number of changes we could make in the existing requirements to facilitate public access to and use of the type of information now appearing in these reports. One simple change would be to require the station to include the name of and method for contacting the person at the station responsible for collecting comments on the station's compliance with the CTA. We ask for comment on how such a requirement could be implemented without being overly burdensome. To the extent we amend our rules to define "core" programming

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[41]APA NOI Comments at 5-6. See also Kunkel NOI Reply Comments at 17-19; The National PTA En Banc Comments at 14-15; CME et al. NOI Comments at 37-39.

[42]Such methods are used in other countries. Australian television stations, for example, use an icon indicating a program suitable for children prior to showing a children's program.

[43]See 47 C.F.R. § 73.3526(a)(8)(iii).

(discussed infra at paras. 36-43), it also appears reasonable to require licensees to provide a brief explanation of how particular programs meet that definition. In addition, if we adopt the program sponsorship proposal described below, we believe that licensees should be required to include information regarding both the programs they aired themselves and the programs they sponsored so that this information is verifiable.

26. More generally, we seek comment on ways of rendering the required information in an easily understandable yet comprehensive form. At a minimum, we believe that the reports should be physically separated from the rest of the material in the public inspection file, as is the licensee's political file, so that parents and other interested parties can view the information without having to search through other unrelated materials. In addition, we believe that licensees should make efforts to publicize the reports, by, for example, announcing their existence and location periodically over the air. We also ask whether these reports should be produced annually or quarterly, or whether we should, as we do now, allow stations to choose one of these two options.

B. Definition of Programming "Specifically Designed" to Serve Children's Needs

27. Background. Under both the CTA and our rules, licensees are allowed to demonstrate that they have met their children's programming requirement in part through general audience and entertainment programs that contain information or illustrate messages helpful to children, but they must also air some programming "specifically designed" to serve the educational and informational needs of children.[44] Our current definition of educational and informational programming – "programming that furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs"[45] – is very broad and makes no distinction between general audience/entertainment programs and programs that are specifically designed to educate and inform. As we explained in our Memorandum Opinion and Order, we adopted this very general definition because we thought giving broadcasters wide latitude to make their own children's programming judgments would foster creativity.[46] In addition, we explained our belief that Congress intended the Commission to defer to the "reasonable programming judgments" of licensees.[47] We also adopted permissive guidelines for the exercise of licensees' discretion in applying this

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[44]47 U.S.C. § 303b(a)(2); 47 C.F.R. § 73.671(a).

[45]47 C.F.R. § 73.671 Note.

[46]Memorandum Opinion and Order, 6 FCC Rcd at 5099.

[47]Id. (citing 136 Cong. Rec. S. 10121 (remarks of Sen. Inouye) (July 19, 1990)).

definition, encouraging them to use these guidelines in assessing the needs of children in their communities and deciding on the types of programming to air.[48]

28. We found in our review of license renewal applications that some broadcasters were claiming as "educational and informational" programs that had very little educational content. Thus, having preliminarily found that clarification of our definition might be warranted, we sought comment in our NOI on two relevant views: (1) that licensees should rely primarily on standard-length programming that is specifically designed to serve the educational and informational needs of children, and only secondarily on short-segment programming; and (2) that the "primary" objective of qualifying "core" programming should be educational and informational, with entertainment as a secondary goal.[49]

29. Comments. Several broadcast organizations, including NAB and INTV, argued in response to our NOI that our current broad definition of educational and informational programming should be retained. According to NAB, for example, this definition strikes the appropriate balance between allowing licensees to make their own programming decisions on the one hand and providing guidance to the industry and Commission staff on the other.[50] In contrast, public interest groups, including educational associations, consumer groups, and children's organizations, as well as other interested parties, generally agreed that our current definition is so vague that it has failed to prompt an adequate response by broadcasters and should therefore be narrowed.[51]

30. A number of commenters, including Children's Television Workshop ("CTW"), the Walt Disney Company ("Disney"), CBS, INTV, and NAB, disagreed with our suggestion in the NOI of requiring education to be the "primary" objective of core programming on the ground that such a requirement relies on a "false dichotomy" between education and entertainment. These parties expressed the view that children's shows must be entertaining to attract an audience, and they noted that highly respected educational shows currently on the air have a large entertainment component.[52]

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[48]Report and Order, 6 FCC Rcd at 2114-15.

[49]8 FCC Rcd at 1842-43.

[50]See NAB NOI Comments at 19-20. See also INTV NOI Comments at 11-12 and NOI Reply Comments at 1-6; Tribune NOI Comments at 4.

[51]See, e.g., CME et al. NOI Comments at 9-12; Charren En Banc Comments at 12.

[52]See, e.g., CTW NOI Comments at 6-8; Disney NOI Comments at 1-10 and En Banc Comments at 1-5; INTV NOI Comments at 12, NOI Reply Comments at 2-6, and En Banc Reply Comments at 11, 14-15; NAB NOI Comments at 21 and NOI Reply

However, other commenters, including the APA and Westinghouse Broadcasting Company, Inc. ("Westinghouse"), supported our suggestion that education should be the "primary" objective of core programming.[53] As an alternative to our suggestion, Disney proposed that qualifying programming should have education as a "significant purpose."[54]

31. With respect to the issue of standard-length versus short-segment programming, comments were generally divided between public interest organizations, which favored standard-length shows, and broadcasters, which stressed the advantages of short-segment programming. A number of parties, including Capital Cities/ABC, Inc. ("ABC"), Fox Children's Network ("Fox"), NAB, and INTV, argued that short-segment programs are better suited to the attention spans of young children. Broadcasters also pointed out that short segments can be aired immediately adjacent to or in the middle of highly rated children's entertainment shows, thereby ensuring that they reach a large audience, and can be produced more easily and cheaply by individual stations.[55] Commenters such as the APA, CME et al., and Dr. Kunkel disputed the contention that the attention span of young children is too limited for 30-minute programs and argued that scientific data demonstrate that standard-length programming is in fact more educational than short segments.[56] These commenters also pointed out that standard-length programs generally are regularly scheduled and therefore listed in program guides, which enables parents and children to select such programming, if desired.[57]

Comments at 6-7; CBS NOI Comments at 32-35; National Broadcasting Company, Inc. ("NBC") NOI Comments at 29-33 and En Banc Comments at 4-5; Thirty-Six Broadcasters NOI Comments at 12-14; and Pulitzer NOI Reply Comments at 7.

[53]See APA NOI Comments at 4-5; Westinghouse NOI Comments at 5-7.

[54]See Disney NOI Comments at 11-12, NOI Reply Comments at 6-11, and En Banc Comments at 5.

[55]See, e.g., INTV NOI Reply Comments at 6-10 and En Banc Reply Comments at 13-14; NAB NOI Comments at 18-19 and NOI Reply Comments at 5-6; Associated Broadcasters, Inc., and Galloway Media, Inc. NOI Comments at 3-6; ABC NOI Comments at 2-6 and En Banc Comments at 4-5; Fox NOI Comments at 4-7 and En Banc Comments at 5-8; Duhamel Broadcasting Enterprises NOI Comments at 2-3.

[56]See, e.g., APA NOI Comments at 2-3 and NOI Reply Comments; Kunkel NOI Reply Comments at 7-14; CME et al. NOI Comments at 12-13.

[57]See, e.g., APA NOI Comments at 2-3 and NOI Reply Comments at 7; CME et al. NOI Comments at 13 and En Banc Reply Comments at 26-28; The National PTA En Banc Comments at 15-16.

32. Many commenters, in addition to responding to the specific questions we raised in our NOI, suggested other ways we might revise our definition of educational and informational programming to promote the goals of the CTA more effectively. Thus, for example, Peggy Charren and CME et al. proposed that the Commission should count as "core" programming only programming that is aired between 7:00 a.m. and 10:00 p.m.[58] According to CME et al., a large percentage of new educational shows have been aired between 5:30 a.m. and 7:00 a.m., even though CME et al. claim that most children do not watch television during that time period.[59] CME et al. further suggest that, because the needs and interests of different age groups vary widely, core programming should be targeted to serve specific age groups and stations should be required to identify the target group of each program claimed as "core" in their license renewal applications.[60]

33. Among other suggested rule revisions were CTW's idea of requiring that educational and informational programming specifically designed for children (1) be produced with the assistance of independent educational advisors; (2) be created to fulfill explicit written educational goals; and (3) be evaluated for effectiveness.[61] The National PTA and CME et al. suggested that educational and informational programming be defined to include programs addressing certain subject areas, such as history, science, literature, fine arts, and current events.[62]

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[58]See Charren En Banc Comments at 12; CME et al. NOI Comments at 14-16.

[59]See CME et al. NOI Comments at 14-16.

[60]See CME et al. NOI Comments at 32-34. See also Charren En Banc Comments at 12; The National PTA En Banc Comments at 10-11, 12-13.

[61]See CTW En Banc Comments at 2-3.

[62]See The National PTA En Banc Comments at 12; CME et al. NOI Comments at 11 and En Banc Reply Comments at 12-13. CME et al. suggested in particular that the Commission adopt a revised general definition of educational and informational programming that would include programs that further an understanding of certain subjects and that this definition should be distinct from a definition of core programming. Several parties endorsed the CME-proposed definition, including Interfaith Broadcasting Commission ("Interfaith") (Interfaith En Banc Comments at 6), and Office of Communication of the United Church of Christ ("UCC") (UCC En Banc Reply Comments at 2). (Although UCC styled this document "Comments," it is referred to herein as Reply Comments because it was filed by the deadline for reply comments but not by the deadline for comments.) Interfaith and UCC would also include religion and positive moral values as appropriate topics for educational children's programming.

34. Discussion. We continue to believe that broadcasters should be permitted to exercise programming discretion to the fullest extent possible consistent with the requirements of the CTA. We tentatively conclude, however, that our current definition of educational and informational programming does not provide licensees with sufficient guidance regarding their obligation to air programming "specifically designed" to serve children's educational and informational needs, which is the only category of programming that the CTA specifically requires every licensee to provide.

35. Our review of license renewal applications reveals that many licensees do not clearly distinguish between the general audience/entertainment programs they have shown that serve children's needs and the programs they have aired that were specifically designed to educate and inform children. Moreover, stations are continuing to identify general audience and entertainment programming in their license renewal applications as specifically designed to serve children's educational and informational needs.[63] In light of these circumstances, and guided by the principle that our rules should be clear, simple, and fair, we are inclined to think that we should replace our current broad definition of educational and informational programming with a more particularized definition of programming "specifically designed" to serve children's educational and informational needs – i.e., "core" programming – that will provide licensees with clear guidance regarding the types of programming that will meet their obligation to air such programming. We do not believe that a definition of general audience and entertainment programming that serves children is needed, because licensees appear to be airing sufficient amounts of such programming. In contrast, we believe that a clear definition is needed to stimulate an adequate supply of programming "specifically designed" to serve children in view of what appears to be continuing confusion among licensees in this regard. In our view, a definition of such programming would prompt those licensees that are not already doing so to take steps to improve their service to children, because it would prevent them from relying largely on programs that serve children only marginally to meet their obligation under the CTA.

36. Proposal. We tentatively conclude that we will define "core" educational programming as those programs that meet the following requirements: (1) the program is specifically designed to meet the educational and informational needs of children ages 16 and under (i.e., has education as a significant purpose); (2) the educational objective of the program and the target child audience are specified in writing in the children's programming report described above; (3) the program is aired between the hours of 6:00 a.m. and 11:00 p.m.; (4) the program is regularly scheduled; (5) the program is of a substantial length (e.g., 15 or 30 minutes); and (6) the program is identified as educational children's programming at the time it is aired, and instructions for listing it as educational programming are provided by the licensee to program guides.

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[63]Recent programs identified as such include, for example, "Beverly Hills 90210."

37. The elements of our proposed definition are designed to address both our own concerns raised in the NOI and those expressed by commenters. We note first in response to The National PTA and CME et al. that we do not believe that it is appropriate to limit educational programming to any identified list of subjects. In addition, we think that it should be left to broadcasters to decide whether they need or wish to hire educational advisors to assist them with the production of programming. Thus, we do not propose to adopt either of these ideas. With respect to the concern expressed by Disney and others that educational programming must be entertaining to be successful, we wish to make clear that it is our desire to encourage producers to make educational programming that is attractive to children. At the same time, we must ensure that broadcasters meet their obligation under the CTA to air programming specifically designed to educate and inform.[64] We therefore propose to require that any program which is claimed to be "specifically designed" to meet children's needs have education as "a significant purpose." We believe that this terminology makes clear that education need not be the only purpose of programming designed to meet the educational needs of children, but must be more than an incidental goal. We invite comment on this tentative conclusion.

38. With respect to the second element of our core programming definition, we tentatively agree with those commenters who have suggested that licensees be required to specify in writing the educational objective of a core program, as well as its target child audience, because we believe that such a requirement will help licensees focus on children's specific educational needs. We also believe that this information will assist parents to better understand licensees' programming efforts and thus afford them the means to participate with licensees in developing effective and responsive children's programming. We propose that such information should be included in the children's programming report that licensees place in their public inspection file and that we propose to make more readily accessible to the public.

39. Some commenters have argued that the Commission should take action to ensure that there is an adequate supply of core programming targeted to every age group, asserting that there is little such programming for pre-school and elementary-aged children.[65] We recognize the possibility that licensees may be induced to air programming for children over 12 by the fact that (1) this group has greater spending power than young children, (2) shows for older children may attract general audiences as

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[64]We note that in proposing its "significant purpose" standard, Disney urges the Commission to discard the concept of "core" programming altogether. Disney NOI Reply Comments at 2-6. However, the CTA requires broadcasters to air programming specifically designed to be educational and informational, and it is this type of programming that is the focus of our concern.

[65]See, e.g., CME et al. NOI Comments at 34-37; The National PTA En Banc Comments at 11.

well as children, and (3) programming designed for children ages 12 and under is subject to commercial limits, whereas programming for older children is not.[66] We continue to believe that it would be undesirable to require broadcasters to target particular segments of the child audience, and we prefer to leave licensees maximum flexibility to choose which segments of the child audience they wish to serve.[67] Moreover, we do not have adequate data showing that in fact younger age groups are underserved relative to other children. For this reason, we ask those who disagree with our tentative view on this matter to provide us with data relevant to whether there is a shortage of educational programming targeted to certain age groups. If the data show that younger children are indeed underserved, what would be the best way to correct the problem? Should we in some way provide additional incentives for broadcasters to develop programming designed for children ages 12 and under or to any subset of this group?

40. As for the third element of our definition of core programming, we also agree with those who argue that credit at license renewal time should be given only for programming shown during hours when children are likely to watch television. We tentatively propose to credit as core programming children's educational programs aired between 6:00 a.m. and 11:00 p.m. The data indicate that these hours include the time periods most popular for television viewing among children 2 through 17. Thus, as noted above, children ages 6 to 17 watch the most television during prime time. For children 2 to 5 years old, the most popular viewing time period is 10:00 a.m to 4:00 p.m. Monday through Friday, with prime time the second most popular.[68] Although several commenters argued that core programming should be aired between 7:00 a.m. and 10:00 p.m.,[69] we are inclined to adopt a wider permissible time frame. We propose to credit programming aired up to 11:00 p.m. because we believe that children watch television through the entire period of prime time.[70] In addition, we agree with commenters that expressed the view that programming aired as early as 6:00 a.m. is

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[66]See CME et al. NOI Comments at 35; The National PTA En Banc Comments at 11.

[67] See Report and Order at 2114; Memorandum Opinion and Order at 5100.

[68]See supra note 8 and Appendix D.

[69]See, e.g., Charren En Banc Comments at 12; The National PTA En Banc Comments at 8; CME et al. En Banc Reply Comments at 29-32. The APA suggests that core programming should be shown between 7:00 a.m. and 9:00 p.m. APA NOI Comments at 5.

[70]See supra note 8. See also Report and Order, Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. § 1464, GC Docket No. 92-223, 8 FCC Rcd 704, 707 (1993), appeal pending sub nom. ACT v. FCC, Case No. 93-1092 (D.C. Cir.) (finding that most of children's television viewing occurs during prime time hours).

valuable because not an insignificant number of children are in the audience during this time.[71] However, we are concerned that educational programs not be routinely relegated to the 6:00 a.m. to 7:00 a.m. hour, which may be earlier than many children watch television, simply because it may be a less costly time for licensees to discharge their educational programming obligation. Accordingly, we solicit further comment on whether core program hours should include 6:00 a.m. to 7:00 a.m. If so, and if the data confirm that fewer children watch at this time than later in the day, should we limit the percentage of a station's total core programming that may be shown during this hour? We invite comment on how we can provide incentives to air children's educational and informational programming at times when children are most likely to be watching.

41. Turning to the fourth element of our definition of core programming, we are currently inclined to require that such programming be regularly scheduled because we think that it is important for children and their parents to be able to easily anticipate when educational programming will be aired. However, we do not wish to create a disincentive to air children's educational specials, which may not be regularly scheduled or which may air at relatively infrequent intervals. We ask for comment on whether we should require core programs to be regularly scheduled and, if so, how often and in what manner programs should be scheduled in order to be considered "regularly" scheduled (e.g., once a week, once a month, or so long as the program can appear in program guides).

42. With respect to the fifth element of our definition of core programming, we are also inclined to require that core programming be of substantial length. Clearly, a standard-length program – generally understood to be at least one half-hour long[72] – would satisfy this requirement. Such length programs are typically regularly scheduled and therefore available to the child audience at predictable times. A shorter length program, however, may nevertheless reflect a comparable level of service by a station to its child audience. Moreover, it is certainly possible to schedule 15-minute programs regularly and have such programming listed in program guides. We ask commenters to address the extent to which such programs are now listed in these guides. More generally, we ask for comment on what length of program should satisfy the proposed requirement that core programming be of substantial length. While we are inclined to require some degree of time commitment, we recognize that short-segment programming can play a useful role in serving the needs of children and we do not wish to give broadcasters a disincentive to air educational short segments that provide helpful information or respond to local needs. Accordingly, we will consider alternative views on this element of our proposed definition. More specifically, we ask whether short segments that are specifically designed to serve children's educational needs should be credited as core programming and, if so, how they should be credited. Should we, for

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[71] See NAB En Banc Comments, Attachment 1, at 7, and Attachment 2A.

[72] See NOI, 8 FCC Rcd at 1842 n.12.

example, allow a certain percentage of core programming to consist of short segments? We are also interested to know whether broadcasters might want to meet a part of their core programming obligation by airing educational segments embedded within a standard-length noneducational program. Although we do not believe that the noneducational programs in which such segments are embedded should be credited as core programming, we seek comment on whether the segments themselves should be counted as core educational programming, and, if so, how they should be credited.

43. With respect to the sixth element of our definition, as discussed above, we propose that stations identify "core" programs as educational and informational at the time they are aired. In addition, to the extent that programs are scheduled, we propose to require that licensees make available the necessary information for listing them as educational and informational in program guides.[73] We ask for comment on this proposal, as well as other ideas about how stations can inform the public of upcoming children's educational and informational programming.

44. Finally, we seek comment on whether the permissive guidelines we currently encourage broadcasters to use to assess community needs should be retained in any form if we adopt our proposed definition of core programming, and, if so, how they should be used.[74] The assessment criteria we adopted as permissive guidelines are (1) the circumstances within the community, (2) other programming on the station, (3) programming aired on other broadcast stations within the community, and (4) other programs for children available in the broadcaster's community of license.[75] To the extent our proposed definition has the effect of refocusing broadcasters' efforts in this area, a set of assessment guidelines may be unnecessary.

C. Further Options

45. Background. We believe that our proposals to ensure that the public has fuller, more accessible programming information, and to define programming "specifically designed" to serve the educational and informational needs of children, would be good steps toward achieving the goals of the CTA more effectively. However, we are concerned that increased public information and a clear definition of core programming may not be enough to bring about the kind of measurable increase in educational and informational programming contemplated by Congress. As we have indicated, we are disappointed that the amount of such programming on broadcast television has not increased as much as anticipated since we implemented our current

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[73] See supra para. 24.

[74] See supra para. 27.

[75] See Report and Order, 6 FCC Rcd at 2114-15.

rules, and we expect to see further improvement. To ensure such improvement, we believe it necessary to take some type of further action.

46. When we adopted our current rules, we decided against imposing any kind of quantitative processing guideline or standard because Congress "[did] not intend that the FCC interpret this section as requiring a quantification standard."[76] As we then stated, we also feared that a quantitative processing guideline might have the unintended effect of creating a ceiling on the amount of educational and informational programming on the air.[77] Thus, we declined to establish a processing guideline and stated instead that the amount of "specifically designed" programming needed to comply with the CTA was likely to vary according to different circumstances, including the type of programming aired.[78] However, as noted above, we sought comment in our NOI on whether a processing guideline specifying an amount and type of children's programming should be adopted to provide clearer guidance to licensees and facilitate staff grant of license renewal applications.[79]

47. Comments. While many broadcasters and broadcast organizations, including NAB and NBC, were opposed to clarifying the amount of programming that would comply with the CTA, others, such as INTV, Tribune Broadcasting Company ("Tribune"), and Act III Broadcasting, Inc. ("Act III"), agreed with the NOI that clarification would be useful to licensees.[80] INTV also stated that the market would respond to new demand for programming, and perhaps do so more efficiently, if that demand were made more stable and predictable by the establishment of specific expectations by the Commission. In addition, INTV expressed the view that specific guidance as to the Commission's expectations is likely to effect an increase in the overall amount of educational and informational programming because it will encourage stations that have been uncertain about their obligation to air at least the minimum amount expected.[81]

48. Some of those opposed to clarified standards argued that better results would be achieved by permitting licensees to exercise their discretion in deciding how much

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[76]See Senate Report at 23 and House Report at 17.

[77]See Memorandum Opinion and Order, 6 FCC Rcd at 5100.

[78]See Report and Order, 6 FCC Rcd at 2115.

[79]8 FCC Rcd 1841, 1842-43.

[80]INTV NOI Comments at 7-8; Tribune Comments at 1-2, 12-13; Act III NOI Comments at 10-11. INTV stated, for example: "Specificity will add much needed certainty to the renewal and licensing process." INTV NOI Comments at 7.

[81]INTV NOI Comments at 7-8.

educational programming to air.[82] Some broadcasters also argued that the use of a quantitative processing guideline would be premature, attributing any dearth of available educational programming to the fact that the market needs time to place new programs on the air.[83] NAB and others further argued that in fact new programs were becoming available, and that the amount of available programming would continue to increase without a quantitative processing guideline.[84] Certain broadcasters contended that a requirement to increase the quantity of children's educational programming might undermine the quality of such programming by forcing, or providing an incentive to, licensees to abandon high-cost and perhaps high-quality shows in order to pay for a greater number of less expensive programs.[85] Commenters opposed to a quantitative processing guideline also contended that the adoption of such a guideline would violate the First Amendment and be contrary to the intentions expressed by Congress in enacting the CTA.[86]

49. Those broadcasters who favored clearer guidance regarding the amount of programming required under the CTA generally advocated the establishment of a safe harbor, i.e., an amount of programming that, if met, would establish compliance with the CTA and insulate licensees from further educational programming compliance review, as well as protect them from petitions to deny and competing applications. According to INTV's suggestion, stations that did not meet the safe harbor criteria could nonetheless demonstrate that they had complied with the CTA and thus could be granted their license renewal, although their applications would be subject to heightened scrutiny and they would not be protected from challenges related to their compliance with the statute's programming requirements. INTV also suggested that the Commission establish a safe harbor by issuing a policy statement rather than by adopting a processing guideline, arguing that a policy statement would have the advantage of informality and

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[82]See, e.g., NAB NOI Comments at 3, 16-17; NBC NOI Comments at 9.

[83]See, e.g., NAB NOI Comments at 5-8, 10-12 and NOI Reply Comments at 2; Haley, Bader & Potts NOI Comments at 4-7. See also INTV NOI Comments at 3-4.

[84]See, e.g., NAB NOI Comments at 5-8, 10-12, NOI Reply Comments at 2, and En Banc Reply Comments; CBS NOI Comments at 3-5, 8-20; Haley, Bader & Potts NOI Comments at 8-9. See also INTV NOI Comments at 4, NOI Reply Comments at 11-12, and En Banc Reply Comments.

[85]See, e.g., Thirty-Six Broadcasters NOI Comments at 6-8; Westinghouse NOI Comments at 11; and Pulitzer NOI Reply Comments at 10.

[86]See, e.g., ABC NOI Comments at 13-17 and En Banc Reply Comments at 2; NBC NOI Comments at 20-25; The Media Institute En Banc Comments at 2-4.

could be modified or abandoned more easily than a processing guideline as the marketplace begins to produce adequate children's programming.[87]

50. Public interest commenters supported the idea of a quantitative processing guideline for children's programming. Among the suggestions made by these parties are the proposal of Peggy Charren of 7 hours per week of regularly scheduled "core" programs distributed throughout the week, the proposal of CME et al. of one hour per day of core programming, and CTW's proposal that licensees be required to air, at a minimum, the greater of: (1) a certain fixed amount per week of standard-length programming specifically designed to meet the educational and informational needs of children; and (2) an amount of such programming equal to a percentage of the total weekly amount of non-qualifying standard-length children's programming aired by the station.[88]

51. Many commenters favoring the adoption of a quantitative guideline called for a daily minimum, and in particular a requirement of one hour per day.[89] In contrast, most broadcasters argued that, if a guideline were to be imposed, it should be a weekly guideline. NAB and ABC, for example, pointed out that network affiliates air the bulk of their children's programs on the weekend, while most independent stations, including Fox affiliates, broadcast children's programs on weekdays.[90] According to ABC, a

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[87]See INTV NOI Comments at 6-11. INTV and Tribune proposed that the Commission establish a safe harbor of 2 hours per week of educational children's programming. At least 1 hour would have to be standard-length programming designed to serve the educational and informational needs of children; the other hour could include entertainment and short-segment programming that serves the educational and informational needs of children. See INTV NOI Comments at 6, 10; Tribune NOI Comments at 12-15.

[88]See Charren En Banc Comments at 12; CME NOI Comments at 21-24; CTW NOI Comments at 12-13 and En Banc Comments at 3.

[89]See, e.g., The National PTA En Banc Comments at 8, 10; Interfaith En Banc Comments at 8; Maryland Campaign for Kid's TV En Banc Comments; CME En Banc Comments at 25; CME et al. En Banc Reply Comments at 23-26; Newton Minow En Banc Reply Comments at 3; UCC En Banc Reply Comments at 3.

[90]ABC states that 90 percent of network affiliates (not including Fox affiliates) have no regular weekday children's programs, while most independent stations air children's programs during the weekday "early fringe" time period (3:00 p.m. to 6:00 p.m. Eastern time). ABC NOI Comments at 18-19 and En Banc Reply Comments at 3. NAB states that network affiliates are providing more general news and information during weekday morning and late afternoon/early evening time periods, and air children's programs on the weekends when children are not in school. NAB En Banc Reply Comments at 5.

weekday program requirement would force it to displace early morning and afternoon adult-oriented news and public affairs programs even though children's programs are available at these times on independent and public stations, as well as on cable channels.[91] NAB argued that the current counter-programming practice of networks and affiliates should not be disturbed by a per-day educational programming requirement.[92]

52. Discussion. We believe that it is important to collect additional and more precise data, particularly with respect to the amount of core programming as we propose to define it, before determining which additional step is necessary.[93] As discussed above, the studies submitted to us are inconclusive because their results are subject to question for various reasons. In addition, because the information presented in renewal applications is based on our current vague definition, it does not provide us with a clear picture of the amount of programming specifically designed to serve children's educational and informational needs on the air. As already noted, however, the results of the studies discussed above and the information in the renewal applications received to date do suggest that any increase in the amount of such programming being aired since passage of the CTA has been modest at best and that some further action on our part is warranted. We therefore set forth below three alternative options for further action: (1) Commission monitoring of the amount of educational and informational programming on the air during a specified period following adoption of measures to improve the flow of programming information to the public and a clarified definition; (2) adoption of a safe harbor processing guideline; and (3) adoption of a programming standard. We seek comment on which of these options should be implemented. We also invite comment on possible new license renewal procedures and program sponsorship rules that could be implemented if a processing guideline or programming standard is adopted.

53. In setting forth these options, we want to emphasize our concern that, although there is an abundant supply of general audience/entertainment programming that serves children's needs in some way, it appears that the market has not produced an adequate supply of programming specifically designed to serve the educational and informational needs of children. We have already proposed one approach to at least partially address this shortcoming – increasing and improving the flow of information to the public. Without adequate information about the relevant product (here, core programming), the market cannot respond in an efficient manner. In addition, the market's failure to provide more core programming can be attributed to the relatively

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[91]ABC En Banc Reply Comments at 3-5. See also CBS NOI Comments at 24-25 and En Banc Comments at 7.

[92]NAB En Banc Reply Comments at 5-6.

[93]Data submissions should clearly identify the characteristics of the programs included in the data sets.

weaker buying power of children (compared to the general viewing populace) and the fact that such buying power derives from parents. Moreover, since the promotional efforts for children's programming have been directed largely at the children themselves rather than their parents, a portion of the critical information that facilitates market performance is lost. Finally, we observe that the structure of the broadcasting market does not have a mechanism for responding to the intensity of an individual viewer's desire for a particular program. Unlike the purchaser of products in a retail setting, the home viewer cannot pay more to register the intensity of his or her preference for a particular product. Rather, the primary mechanism for assessing demand in the television broadcast market is the tabulation of numbers of viewers. When dealing with a small audience pool – here, viewers of children's core programming – the absence of a market-based mechanism for registering intensity of preference can result in a critical loss of programming. While we believe that our proposals for increasing the flow of information to the public and for clarifying the definition of educational and informational programming will help promote the goals of the CTA more effectively, to the extent that these efforts may not suffice to address the marketplace dynamic described above, we ask whether some quantitative regulation may be warranted.

54. We recognize that the Commission has previously stated that a quantitative standard would be contrary to Congressional intent.[94] However, upon reexamining the CTA and its legislative history, we note that the CTA itself does not prohibit quantitative programming standards. Moreover, the legislative history makes clear that, while Congress did not intend itself to require such a standard, the House and Senate Reports do not preclude the Commission from adopting one.[95] Thus, we believe that it is within the Commission's discretion to decide how the objectives of the CTA may best be effectuated.

1. Monitoring Broadcaster Performance

55. One option would be for the Commission to monitor the programming performance of licensees for a specified period of time – for example, three years – to determine whether or not our proposed efforts to improve the dissemination of information to the public and clarify our definition of educational and informational

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[94]Report and Order, 6 FCC Rcd at 2115; Memorandum Opinion and Order, 6 FCC Rcd at 5100.

[95]See House Report at 17 ("The Committee does not intend that the FCC interpret this section as requiring or mandating a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast. . . ."); Senate Report at 23 ("The Committee does not intend that the FCC interpret this section as requiring a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast. . . .").

programming do in fact result in a significant increase in programming specifically designed to serve children's educational and informational needs. To accomplish such monitoring, we suggest that the Commission would require stations to submit annually to the Commission a description of their educational and informational programming. We also believe that, for such monitoring to be meaningful, it would be essential for licensees to include in their annual submissions sufficient information for the Commission to measure the average weekly amount of core programming on the air. At the end of the specified period, the Commission would decide whether licensees were meeting the CTA's objectives or whether stronger regulatory measures were needed to achieve the statute's goals. We seek comment on whether the Commission should implement this option and, if so, how long the monitoring period should be. We also ask for suggestions regarding how the Commission should collect information from licensees, and what kinds of information should be required.

2. Safe Harbor Processing Guideline

56. A second option would be to establish a safe harbor quantitative processing guideline. Such a guideline would specify an amount of core programming that would represent one means of satisfying the CTA's programming obligation and permit staff approval of the children's programming portion of a license renewal application. Thus, it would be similar to the kind of safe harbor proposed by INTV and others and the processing guideline proposed by CME et al. in that, if a licensee aired the prescribed amount of programming, its license renewal application would not be reviewed further for CTA programming compliance. The only challenges to a licensee's children's programming performance that would be entertained would be those questioning the bona fides of a licensee's claim to have met the processing guideline. A licensee that did not meet the processing guideline would have its application referred to the Commission for consideration and would have the opportunity to demonstrate that it had complied with the CTA in other ways. The Commission would then evaluate such a licensee's performance based on its overall efforts and other circumstances. Failure to meet the guideline would result in greater review of the application, but would not constitute a violation of the Commission's rules.

57. Given the results of the studies submitted to us, and allowing for the possibility that these studies may be somewhat flawed,[96] we are currently inclined to think that, if a processing guideline is adopted, it should be set at 3 hours per week of core programming, at least initially. According to NAB, the average amount of educational programming aired by commercial stations in the fall of 1993 was 3.6 hours per week. According to INTV, the average amount of such programming aired by independent stations and Fox affiliates in the first quarter of 1994 was 4.64 hours per

[96] See supra para. 18.

week.[97] Although it is not clear how much of this programming would meet our proposed definition of core programming, some portion of it would meet this definition. Thus, a requirement of 3 hours of core programming per week should not be difficult for the vast majority of stations to meet, particularly since the market has had time to produce more children's programming since NAB and INTV conducted their studies and both organizations assert that more programming is becoming available.[98] We seek comment on these observations and suggestions.

58. In addition, we invite comment on whether, if we adopted a processing guideline, we should increase it in stages over time. Such an approach would enable us to encourage stations to increase their core programming while allowing for long-term factors such as existing programming contracts, schedule planning, and program promotion. Moreover, if we were to institute a safe harbor processing guideline, we would want to avoid creating any potential incentives for stations airing more than 3 hours per week of core programming to reduce those amounts. If we adopted a phased-in processing guideline, what should the ultimate level of the guideline be, and over what period of time should it be phased in? One possibility would be to increase the guideline by increments of one half hour each year until reaching a level of 5 hours of core programming per week.

3. Programming Standard

59. A third option would be to establish a standard requiring that every station be responsible for the airing of a minimum amount of core programming in its market. Stations meeting this requirement would qualify for staff approval of the children's programming portion of their license renewal application. Those not meeting the standard would have their applications referred to the Commission for determination of the appropriate remedy. Notwithstanding failure to meet the standard, the Commission could hold that the licensee had in fact complied with the CTA's requirements. However, a licensee failing to meet a standard would have a much heavier burden to show that it complied with the CTA than would be the case if it did not meet a processing guideline. Thus, a licensee failing to meet a standard would have to make a compelling showing that the qualifying programming it did air, along with any of its other programming-related activities in its market, served the educational and informational needs of children in that market as well as or better than an additional amount of programming specifically designed to serve the educational and informational needs of children.

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[97] See supra para. 16.

[98] See NAB NOI Comments at 5-8, 10-12; INTV NOI Comments at 4 and En Banc Reply Comments at 2-3.

60. As discussed above in connection with a safe harbor processing guideline, we believe that, given the current level of programming documented by the data submitted to us, the appropriate level of a programming requirement would be 3 hours of core programming per week, at least initially. Even allowing for any problems inherent in the results of the NAB, INTV, and Kunkel studies, it should be feasible for the vast majority of licensees to meet a 3-hour-per-week requirement, since this level is below the average figures produced by those studies and stations have had more time to respond to the CTA since the studies were conducted. We seek comment on this suggestion and, as with the option of a processing guideline, we invite interested parties to comment on whether it would be appropriate to increase the requirement by, for example, one half hour each year until a requirement of 5 hours of core programming per week is established.

61. A formal standard has certain advantages over a processing guideline, but it also can be more restrictive. A standard is a clear statement that a specified level of core programming or the equivalent is both necessary and sufficient to have complied with the CTA. A processing guideline, on the other hand, merely states that an amount of programming, or its equivalent performance, is sufficient, but not necessary to determine compliance with the CTA. Use of a rule rather than a processing guideline may also be easier to administer and give the Commission a broader range of sanctions with which to address failures to comply with the CTA. We request comment on these observations, and on other considerations commenters believe differentiate a processing guideline from a standard.

4. Certain Issues Relevant to a Safe Harbor Processing Guideline and a Programming Standard

62. There are a number of questions on which we seek comment that are raised by both the option of a safe harbor processing guideline and that of a programming standard. First, we think that any processing guideline or programming requirement that might be adopted should be expressed in terms of hours per week, rather than hours per day. By this, we wish to leave broadcasters flexibility to determine their program schedules. We also think that the weekly amount should be averaged over a specified period of time. We do, however, express some concern about broadcasters who show the majority of children's educational programs during the early morning weekend hours and request comment on this concern. We seek comment on our suggestion of a weekly processing guideline or programming standard averaged over a specified period, and we ask for ideas as to the period of time over which a guideline or standard should be averaged. We also seek comment on the extent to which repeats during a weekly

schedule and later reruns of programs should be counted toward fulfillment of any processing guideline or programming requirement that we might adopt.[99]

63. Second, we seek comment as to whether a processing guideline or programming requirement should be the same for all stations regardless of station type or market size. While a uniform guideline or requirement would be simple and evenly applied, it could have a disproportionate impact on stations in small markets. The impact on stations in small markets could indeed be very different from the effect on stations in large markets if we also permit stations to meet the guideline or requirement by sponsoring programming on other stations, as discussed below, because stations in small markets would not have as many sponsorship options available to them. On the other hand, small markets – which are often rural – may be precisely those markets in which television is most important as an educational resource for children, and therefore it might not serve the needs of children to establish a lower guideline or requirement for small markets.

64. Third, it has been publicly suggested that to give stations an incentive to air high-quality programming, a programming requirement should be based entirely on a certain amount of rating points.[100] Under such an approach, a licensee would be free to determine how it attained the prescribed number of rating points, whether with a few highly popular shows or with many less popular ones. We invite comment on this suggestion and whether it would be appropriate for either a processing guideline or a programming standard. We are interested to know in particular whether a guideline or requirement based on ratings would provide incentives to air programs of high quality or whether it would give stations an unintended incentive to claim credit for programs that do not clearly qualify under a definition of programming specifically designed to meet children's educational and informational needs. We are also concerned that consideration of rating points could make a processing guideline or programming requirement effectively unattainable for small stations that may not have the economic ability to produce or purchase highly rated programs.

65. Finally, we wish to have the fullest information possible regarding the effect of either a quantitative processing guideline or standard on broadcasters and the overall operation of the market. In particular, we seek to quantify, as much as possible, the economic costs of meeting a guideline or standard. Thus, we request that interested parties provide us with detailed information regarding any potential opportunity costs (i.e., the difference in profits from children's educational programming and from other

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[99]The term "repeat" generally refers to rebroadcasts aired within the same week, while rebroadcasts during later time periods are called "reruns."

[100]Richard Frank, then Chairman of Walt Disney Television & Telecommunications, made this suggestion in a speech delivered on March 3, 1995, to Children Now.

programming that might be aired instead) for broadcasters that would be created by the implementation of a processing guideline or programming requirement set at various levels. Anecdotal evidence alone from individual station owners as to their particular economic circumstances will not enable us to make an informed judgment as to the potential industry-wide costs of any particular guideline or requirement and its impact on the industry's ability to serve the public interest. We therefore ask commenters to provide us with one or more studies that quantify any such costs on stations in different sized markets, as well as on the broadcasting industry as a whole. We also urge commenters to ensure that the sample data used to develop estimates of any opportunity costs that stations might face are representative and that the methodology used to develop the estimates is clearly explained.

5. First Amendment Issues

66. In weighing alternatives for further Commission action, we must consider any limitations imposed by the First Amendment of the Constitution. Even assuming that these proposals were found to be content-based restrictions on speech, some restrictions on content have been judged permissible when applied to broadcasting because of the scarcity of frequencies and broadcasters' concomitant duty to provide public service. It is well established that because the radio spectrum is not available to all, broadcasters have a unique duty to act as fiduciaries for the public,[101] and may be required to provide programming to meet important public needs.[102] The Commission therefore is permitted to "place limited content restraints, and impose certain affirmative obligations, on broadcast licensees"[103] where such restrictions are "narrowly tailored to further a substantial governmental interest."[104]

67. We tentatively conclude, and the case law suggests, that the government has a substantial interest in furthering the education and welfare of children through implementation of the CTA. The courts have held that there is a compelling government interest in "safeguarding the physical and psychological well being of a minor."[105] The

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[101]Red Lion v. FCC, 395 U.S. 367, 388-89 (1969).

[102]Metro Broadcasting In. v. FCC, 497 U.S. 547, 567 (1990) (citing FCC v. League of Women Voters of California, 468 U.S. 364, 377 (1984)).

[103]Turner Broadcasting Inc. v. FCC, 114 S.Ct. 2445, 2457, reh'g denied, 115 S.Ct. 30 (1994), (Turner).

[104]FCC v. League of Women Voters of California, 468 U.S. 364 (1984) (League of Women Voters).

[105]Action for Children's Television v. FCC, 852 F.2d 1332, 1343 n. 18 (D.C. Cir. 1988) and Supreme Court Cases cited therein.

legislative history of the CTA states that "[i]t is difficult to think of an interest more substantial than the promotion of the welfare of children who watch so much television and rely upon it for so much of the information they receive."[106]

68. The "narrowly tailored" standard described above is similar to the traditional intermediate scrutiny test that the Supreme Court has applied to non-content regulation of non-broadcasters in United States v. O'Brien, 391 U.S. 367 (1968). In that context, the Court has described the narrowly tailored part of the test as not requiring the "least restrictive means," but rather that "the means chosen [must] not burden substantially more speech than is necessary to further the government's legitimate interest." Turner, 114 S.Ct. 2445, 2469 (1994). The Court further explained that this test is met "so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." Id., quoting Ward v. Rock Against Racism, 491 U.S. 781, 799 (1988) (internal quotation marks omitted).[107]

69. We seek comment on whether each of the proposed alternatives for improving implementation of the CTA is narrowly tailored to further the CTA's interest in furthering the education and welfare of children. The answer will depend, in part, on the facts contained in the record.[108] In an effort to develop an appropriate record we seek, as noted earlier, submission of additional studies concerning whether and by how much children's programming, especially "programming specifically designed to serve the educational and informational needs of children," as we have proposed to define that term, has increased since enactment of the CTA and whether the amount of such children's programming is in fact insufficient to fulfill the requirements and purposes of the Act. The answers to these questions are critical in developing a record that will

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[106]Senate Report at 17; see also House Report at 11.

[107]The Court's decision in Turner lends support to the argument that, even if the "scarcity rationale" noted in League of Women Voters is abandoned, strict scrutiny will not be applied. That demanding standard is applied generally to rules that "distinguish favored speech from disfavored speech on the basis of the ideas or views expressed." 114 S.Ct. at 2459. It does not appear that a standard requiring a certain amount of programming aimed at children's educational and informational needs is not biased in favor of any particular viewpoints. The Court also made clear in Turner that "[i]t would be error to conclude . . . that the First Amendment mandates strict scrutiny for any speech regulation that applies to one medium (or a subset thereof) but not others." Id. at 2468. Thus, a special rule aimed at broadcasters might not be subjected to strict scrutiny as long as separate treatment is "justified by special characteristics" of broadcasting. In that connection, as noted above, broadcasters are given use of the spectrum and "broadcasting is uniquely accessible to children, even those too young to read." FCC v. Pacifica Foundation, 438 U.S. 726, 749 (1978).

[108]See Sable Communications v. FCC, 492 U.S. 115 (1989).

permit the Commission to determine whether the existing approach to implementation of the CTA is overcoming the failure of the marketplace to produce a sufficient quantity of children's programming that led to the enactment of the CTA[109] and whether a modified regulatory approach is needed. We also seek comment on which of the various options proposed here would be a more effective means to implement the substantial governmental interest in furthering the education and welfare of children that underlies the CTA.

70. Subject to our further analysis of the record, each alternative proposed here appears to be less intrusive than the ban on editorializing on non-commercial stations that the Supreme Court held unconstitutional under the First Amendment in League of Women Voters. The Court distinguished the ban on editorializing from other valid broadcasting restrictions including the fairness doctrine and the reasonable access provisions of section 312(a)(7). According to the Court, these restrictions "left room for editorial discretion and simply required broadcasters to grant others access to the microphone. . . ." League of Women Voters, 468 U.S. at 385. The Court further said that the goals of the editorializing ban could be met by requiring more speech, rather than less. Id. at 395.

71. In addition, in League of Women Voters, the Court noted that it had upheld the fairness doctrine because there was "no threat that a broadcaster would be denied permission to carry a particular program or to publish its own views." Id. at 378. We also ask for comment on whether any of these mechanisms would "tend to transform broadcasters into common carriers and . . . intrude unnecessarily upon the editorial discretion of broadcasters." League of Women Voters, 468 U.S. at 379. Finally, the Court emphasized that its decision rejecting the ban on editorializing was a "narrow" one and that "[w]e do not hold that the Congress or the FCC is without power to regulate the content, timing or character of speech . . . ." Id. at 402. Here, Congress has directed the Commission to take action with respect to children's programming. We ask for comment on the relevance of that direction to our First Amendment analysis.

72. We further note that a question exists whether quantitative standards, processing guidelines, or monitoring are more intrusive than the Commission's current, more subjective, approach to implementation of the CTA. We request comment on whether the constraints on broadcasters' discretion are greater or lesser when they have a clear quantitative standard with which to comply (or explicit information in the form of processing guidelines on how to assure routine, staff processing of their applications for

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[109]In enacting the CTA, Congress found that: "Market forces have not worked to increase the educational and informational programming available to children on commercial television." Senate Report at 9. Congress also indicated that the CTA is intended to increase the "amount of educational and information broadcast television programming available to children. . . ." Id. at 1.

renewal, or an expectation of ongoing monitoring) than when they run the risk of having their applications for license renewal denied for non-compliance with a general, subjective standard. We also request comment on whether any of the mechanisms proposed here is overly intrusive. In addition, we also seek comment on whether our proposals would be consistent with elimination of the fairness doctrine.[110]

73. We seek comment on this preliminary analysis with respect to each of the options proposed here.

6. License Renewal Procedures

74. As we have indicated, we wish through our proposed rule revisions to encourage the public, especially parents, to take an active role in urging stations to comply with the CTA, and to reduce the government's role in reviewing such compliance. One way to encourage members of the public to take an active role in monitoring licensees' compliance with the CTA, and to engage in an ongoing dialogue with stations, would be to require that any challenger filing a petition to deny show that he or she had first attempted to resolve the alleged problem with the station in question. As with any other challenge to a licensee's renewal application, a challenge based on a station's children's programming performance could be raised only by a party within the station's viewing area. Beyond this, we seek comment on whether challengers to a license renewal should be required to submit evidence that they contacted the licensee regarding any alleged failure to comply with the CTA, and asked the licensee to correct its alleged noncompliance. How would such a requirement work in conjunction with a processing guideline, as opposed to a programming standard? Could this requirement be utilized even if the Commission opts to monitor programming and not to adopt a guideline or standard? How and when would the challenger have to communicate alleged problems to the licensee? If, for example, we instituted a programming standard of 3 hours of core programming per week averaged over a one-year period, would it be appropriate to require a challenger to notify a station of any alleged violation of the standard within one year of the close of that one-year period? Should the challenger be required to submit his or her complaint to the licensee in writing, and what information should the complaint contain? Finally, we seek comment on what procedures should be put in place to allow the licensee to correct instances of noncompliance brought to its attention by a member of its audience.

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[110]See Syracuse Peace Council, 2 FCC Rcd 5043 (1987), aff'd on other grounds, 867 F.2d 654 (D.C. Cir. 1989), cert. denied, 493 U.S. 1019 (1990). Report and Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees, 102 FCC 2d 143 (1985), petition for review dismissed as moot, Radio-Television Directors Ass'n v. FCC, 831 F.2d 1148 (D.C. Cir. 1987).

75. Keeping in mind our objective of reducing the government's role in reviewing CTA compliance, we seek comment on whether, if we implement a safe harbor processing guideline or a programming standard, licensees should be permitted to certify whether they have aired the prescribed amount of core programming. In the absence of a challenge to their license renewal, licensees would not be required to submit materials documenting their programming performance, but only to retain them in their public inspection files. We also seek comment on the following preliminary views. If we instituted a certification procedure in the case of either a safe harbor processing guideline or a programming standard, we believe that stations should be allowed to certify both to airing a sufficient amount of programming themselves and to sponsoring programming in conformance with our sponsorship proposal described below. A certification scheme should not diminish the duty of each licensee to provide full information about its children's programming to the public because we think it is important for parents, educators, and others to have the fullest programming information possible. We believe that full information for the public would assist parents and others in providing a check on licensees' certifications. Of course, if we opt to monitor licensees' programming performance, a certification procedure would be unworkable because we would need to collect programming information from all licensees.

76. We note that when we adopted our current rules, we stated that the legislative history of the CTA suggests that we should review the licensee's children's programming records, and that certification of compliance with the CTA's programming requirement would not provide us with enough information to perform the type of review apparently intended by Congress.[111] We believe, however, that it may be consistent with Congressional intent to require submission of documentation only from those stations that are unable to certify compliance with either a processing guideline or a programming standard. We also believe that our conclusion on this point is buttressed by the steps we are also proposing to take with respect to requiring the improved provision of information to parents. We seek comment on whether every licensee, or only those not meeting a numerical guideline or standard, should be required to submit children's programming information for FCC review.

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[111]We stated in our Report and Order: "In order for the Commission to review a licensee's renewal application in accordance with the manner intended by Congress . . . we must receive sufficient information to determine the extent to which the licensee has responded to the educational and informational needs of children. Moreover, the legislative history strongly suggests that we should review the licensee's children's programming records in evaluating renewal applications." Report and Order, 6 FCC Rcd at 2116.

7. Program Sponsorship

77. As explained above, a third principle we wish to follow is, if we further define a licensee's obligations, to permit licensees to allow the marketplace to determine, to the greatest extent possible, the means available to stations for fulfilling their programming obligation. Thus, if we adopt either a safe harbor processing guideline or a programming standard, we will consider the adoption of "program sponsorship" rules that would give licensees the option of either themselves airing the entire prescribed amount of children's programming, or airing a portion of the prescribed amount themselves and taking responsibility for the remainder by providing financial or other "in-kind" support for programming aired on other stations in their market. At license renewal time, the station sponsoring educational programming shown elsewhere (the "sponsor station") would take credit for the programs it had funded on the other station (the "host station"). We seek comment on this idea, as well as the suggestions set forth below for implementing it and any advantages or disadvantages it might have for the children's programming marketplace.

78. Because the CTA refers to "a licensee's programming" and states that efforts to support programming on other stations may be considered "in addition" to the licensee's own programming, we conclude that the CTA precludes us from allowing a licensee to meet either a processing guideline or a programming standard entirely by sponsoring programming on other stations in the same market.[112] We therefore suggest that, if we adopt any level of processing guideline or programming standard, each station should be required to air at least 1 hour of core educational and informational programming itself and that each be allowed to fulfill the remaining hours of the guideline or standard by sponsoring core programming on other stations. Thus, if an initial processing guideline of an average of 3 hours of core programming per week were adopted, a station could meet it by airing 1 hour of qualifying programming itself and sponsoring 2 hours of qualifying programming on other stations. Similarly, if an ultimate guideline of an average of 5 hours of core programming per week were adopted, a station could meet it by airing 1 hour of qualifying programming itself and sponsoring 4 hours of qualifying programming on other stations. In the alternative, should the amount of qualifying programming aired by the station itself be a percentage of the amount specified by the guideline or standard, e.g., one third?

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[112]The CTA states in pertinent part: "In addition to consideration of the licensee's programming as required under subsection (a) of this section, the Commission may consider–(1) any special nonbroadcast efforts by the licensee which enhance the educational and informational value of such programming to children; and (2) any special efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children. 47 U.S.C. § 303b(b).

79. We believe that a program sponsorship system could provide licensees with more options in meeting either a processing guideline or a programming requirement and lead to more efficient production of core educational programming by encouraging entities with more expertise in and commitment to children's educational programming to take responsibility for the production and distribution of more such programming. An increase in the efficiency of children's program production and distribution could, in turn, result in more core children's programming of higher quality. A program sponsorship system could also serve to minimize any economic cost of meeting a processing guideline or programming requirement. The opportunity costs of airing core educational programming will vary from station to station depending upon differences in a number of factors, including program costs, audience size, and advertising rates. A program sponsorship system would enable stations to minimize the opportunity costs of meeting a processing guideline or programming requirement by permitting stations with the greatest such costs to finance the production of programming to be shown on stations with lower opportunity costs. We recognize, of course, that the net result of such arrangements might be to shift a large portion of the available educational programming off the more popular stations in a market and concentrate them on the least popular stations, which could be an argument against permitting program sponsorship. On the other hand, such a result could in fact have the advantage of creating a channel on which children and parents would be sure of finding educational and informational programming. We seek comment on these issues.

80. In particular, we ask interested parties to comment on whether antitrust law would limit the extent to which stations in a market may cooperate through program sponsorship efforts. In this regard, we believe that a "rule of reason" analysis would generally apply to such arrangements.[113] It is our tentative conclusion that broadcasters' collective efforts to satisfy their educational and informational children's programming obligations through program sponsorship do not create any inherent antitrust problems. As mentioned previously, the CTA is predicated on the failure of the market to provide a sufficient amount of educational and informational programming for children. Thus, Congress has decided to supplant the free operation of the market with respect to children's programming. In addition to the production and distribution efficiencies

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[113]A "rule of reason" analysis weighs all the circumstances of a particular case before determining whether a practice is an antitrust violation. See Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36 (1977); FTC v. Indiana Federation of Dentists, 476 U.S. 447 (1986). In certain circumstances, where cooperation between competitors leads to greater productivity or other benefits, the Supreme Court has undertaken this rule of reason analysis. See, e.g., NCAA v. Board of Regents of University of Oklahoma, 468 U.S. 85 (1984) (applying rule of reason analysis to agreement that restricted televising of college football games); Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1 (1979) (applying rule of reason analysis to agreement among competitors to provide and set price for a "blanket license" to air copyrighted music).

discussed above, another important consideration in this regard is that broadcasters would not be permitted to fulfill their entire programming obligation under the CTA by sponsoring programs on other stations. This residual requirement decreases the likelihood that one station would be able to acquire purchasing power in the children's programming production market.

81. We also seek comment on the tentative views set forth below regarding how a program sponsorship system should work. The CTA and our rules already permit stations to receive credit at license renewal time for supporting educational programming on another station in their market.[114] Indeed, we have held that if one station produces or buys children's programs broadcast on another station, so as to qualify under 47 U.S.C. § 303b(b)(2), both stations may rely on such programming in their license renewal applications.[115] We now seek comment on whether that holding was correct, or whether it undermines the CTA by permitting "double counting." If applied to either a processing guideline or a programming requirement, such double counting could lead to a substantial reduction in existing levels of children's educational programming. It therefore appears that, at least for the purpose of meeting a processing guideline or programming requirement, host stations should not be permitted to claim credit for sponsored programming.

82. It is also our view that a station should be allowed to sponsor programs for the purpose of meeting a processing guideline or programming requirement only on host stations that serve largely the same potential viewers. Otherwise, audiences in some markets might end up with little or no educational children's programming. In addition, broadcasters' obligations to serve the public interest applies to the market in which they are licensed to operate. On the other hand, we do not believe that we should require sponsor and host stations to serve exactly the same area because such a requirement would unduly limit the program sponsorship options available in many markets. Taking into account these competing considerations, it would seem sensible to require that, when any portion of a station's programming that is claimed to satisfy a processing guideline or programming requirement consists of programming shown on another station, the signal of the host station cover 80 percent of either the community of license or the area encompassed within the grade A or grade B contour of the sponsor station. We seek comment on these ideas and also ask how we should evaluate sponsored programming when the 80 percent threshold is not met, whether the sponsored programming is relied upon to meet a processing guideline, relied upon to meet a programming requirement, or used by the licensee to satisfy its overall programming obligation under the CTA. We also ask whether commercial stations should be allowed to sponsor educational programs on noncommercial stations, and how such sponsorship

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[114] Cf. 47 U.S.C. § 303b(b)(2) and 47 C.F.R. § 73.671(b).

[115] Report and Order, 6 FCC Rcd at 2115.

would support the purposes underlying both the CTA and the noncommercial educational licenses.

83. If we adopt program sponsorship rules, it appears to us that stations involved in program sponsorship should be required to list and describe in their public children's programming reports programs shown on other stations as a result of their financial or in-kind contributions. At a minimum, a station should include a description of all sponsored programs, identify the host station on which each program was aired, and provide the time the program aired. We ask for comment on the feasibility of this proposal and how it should be implemented, as well as any other information about sponsored programs that should be provided to the public.

84. To further provide for public accountability, we also think that the host station should identify the sponsor station of every sponsored program at the time it is aired. This would ensure that the sponsor's good name stands behind the sponsored program. We seek comment on this idea.

85. In addition to seeking comment on any other necessary aspects of a program sponsorship system not identified herein, we invite commenters to identify alternatives to our suggested approach to program sponsorship, including alternative definitions of the relevant market for sponsorship agreements. We also welcome the submission of data regarding the economic feasibility of a program sponsorship system and whether such a system would in fact reduce the overall cost of airing educational programming. More specifically, we invite commenters to include in the industry-wide studies of the costs of providing educational children's programming, described in paragraph 65, information regarding how program sponsorship arrangements might affect those costs.

D. Reexamination of Rules

86. If we adopt either a processing guideline or a programming standard, we would intend that the resulting regulatory changes would be made on a provisional or experimental basis, rather than as permanent changes. It is our hope that any such guideline or standard, together with the other changes we propose, will effectuate a significant improvement in television broadcasters' service to children, and also will enable parents to monitor the performance of stations in their communities and ensure through their actions that the CTA's objectives are met.

87. In accordance with these expectations, and to ensure periodic review of the necessity and efficacy of a guideline or standard, we seek comment on whether we should sunset any regulatory changes related to the possible implementation of either of these two options, absent additional Commission action, on December 31, 2004, unless affirmatively extended by the Commission. This date is one year after the close of the renewal cycle for the last group of stations to come up for renewal after rules would be adopted in this proceeding, and would allow the Commission, prior to the sunset, the

opportunity to evaluate fully the effects of any rules adopted here. Thus, it would be our intention to undertake a review prior to the sunset date.

IV. CONCLUSION

88. With this proceeding, we intend to provide the public with a greater ability to monitor station compliance with the CTA, clarify our rules and policies governing educational programming for children to provide licensees with greater certainty as to the scope of their children's programming obligation, and to ensure that the amount of educational and informational programming provided by television broadcasters comports with the goals of the CTA. We believe that we can achieve these objectives by increasing the flow of information to the public about the children's programming that stations are broadcasting, and by adopting a definition of programming "specifically designed" to serve children's educational and informational needs. In addition, we intend to take further action – in the form of instituting monitoring procedures, processing guidelines or a programming standard – in order to ensure that all children have access, as Congress intended, to an adequate supply of educational and informational programming specifically designed for them. We seek comment on all aspects of our proposals, and welcome other ideas commenters may have to achieve the objectives outlined herein.

V. ADMINISTRATIVE MATTERS

89. Ex Parte Rules - Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

90. Comment Information. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before **June 16, 1995** and reply comments on or before **July 17, 1995**. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

91. Initial Regulatory Flexibility Analysis. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document, set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq., (1981)).

92. Additional Information. For additional information regarding this proceeding, contact Diane Conley or Kim Matthews, Mass Media Bureau, Policy and Rules Division, (202) 776-1653.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

The following parties filed formal comments in response to the FCC's Notice of Inquiry:

Act III Broadcasting, Inc.
American Academy of Pediatrics
American Psychological Association
Associated Broadcasters, Inc., and Galloway Media, Inc.
Association of Independent Television Stations, Inc.
Cannell Communications, L.P.; Cosmos Broadcasting Corporation; Cox Broadcasting; Great American Television and Radio Co., Inc.; Midcontinent Media, Inc.; Multimedia Broadcasting Company; River City Broadcasting, L.P.; Scripps Howard Broadcasting Company; Tak Communications, Inc.; Wabash Valley Broadcasting Corp.
Capital Cities/ABC, Inc.
CBS Inc.
Center for Media Education; American Association of School Administrators; Association for Library Service to Children/American Library Association; Center for the Study of Commercialism; Peggy Charren; Consumer Federation of America; Council of Chief State School Officers; Dr. Vincent Hutchins, MD, MPH; National Association for Better Broadcasting; National Association of Child Advocates; National Association of Elementary School Principals; National Association for Families and Community Education; National Black Child Development Institute, Inc.; National Council of La Raza; National Education Association; and National PTA
Children's Television for the '90s
Children's Television Workshop
The Connecticut Broadcasters Association; The Illinois Broadcasters Association; The Iowa Broadcasting Association; The Michigan Association of Broadcasters; The Minnesota Broadcasters Association; The Missouri Broadcasters Association; The Nebraska Broadcasters Association; The New Hampshire Association of Broadcasters; The Oklahoma Association of Broadcasters; The Tennessee Association of Broadcasters; The Washington State Association of Broadcasters; The West Virginia Broadcasters Association; The Wisconsin Broadcasters Association
Duhamel Broadcasting Enterprises
Fox Children's Network
Haley, Bader & Potts
Dr. Dale Kunkel, University of California, Santa Barbara
National Association of Broadcasters
National Association for the Education of Young Children
National Broadcasting Company, Inc.
National Coalition on Television Violence
New York State Board of Regents and Thomas Sobol, President of the University of the State of New York and Commissioner of Education
South Florida Preschool PTA

Thirty-Six Television Stations: KBSD, Ensign, KS; KBSH, Hays, KS; KBSL, Goodland, KS; KEYT, Santa Barbara, CA; KFYR, Bismarck, ND; KGAN, Cedar Rapids, IA; KMOT, Minot, ND; KOVR, Stockton, CA; KQCD, Dickinson, ND; KSTS, San Jose, CA; KTMD, Galveston, TX; KTVO, Kirksville, MO; KUMV, Williston, ND; KVDA, San Antonio, TX; KVEA, Corona, CA; KWCH, Hutchison, KS; WATM, Altoona, PA; WAXA, Anderson, SC; WCFT, Tuscaloosa, AL; WDAM, Laurel, MS; WETM, Elmira, NY; WGGB, Springfiled, MA; WGME, Portland, ME; WHTM, Harrisburg, PA WICS, Springfield, IL; WKAQ, San Juan, PR; WLOS, Asheville, NC; WLUC, Marquette, MI; WNJU, Linden, NJ; WPBN, Traverse City, MI; WSCV, Ft. Lauderdale, FL; WSTM, Syracuse, NY; WSYX, Columbus, NC; WTMJ, Milwaukee, WI; WTOM, Cheboygan, MI; WWCP, Johnstown, PA
Tribune Broadcasting Company
United States Catholic Conference
The Walt Disney Company
Ellen Wartella, University of California, Santa Barbara, and University of Illinois, Urbana-Champaign; and Norma Pecora, Emerson College
Westinghouse Broadcasting Company, Inc.
WTTE, Channel 28 Licensee, Inc.

The following parties filed formal reply comments in response to the FCC's Notice of Inquiry:

American Psychological Association
The Arizona Broadcasters Association; The Maryland/District of Columbia/Delaware Broadcasters Association; The North Dakota Broadcasters Association
Association of Independent Television Stations, Inc.
Center for Media Education; American Association of School Administrators; Association for Library Service to Children/American Library Association; Center for the Study of Commercialism; Peggy Charren; Consumer Federation of America; Council of Chief State School Officers; Dr. Vincent Hutchins, MD, MPH; International Reading Association; National Association for Better Broadcasting; National Association of Child Advocates; National Association of Elementary School Principals; National Association for Families and Community Education; National Black Child Development Institute, Inc.; National Council of La Raza; National Education Association; and National PTA
Children's Television for the '90s
Haley, Bader & Potts
Dr. Dale Kunkel, University of California, Santa Barbara
National Association of Broadcasters
National Broadcasting Company, Inc.
Frank Allen Philpot
Pulitzer Broadcasting Company
Turner Broadcasting System, Inc.
The Walt Disney Company

APPENDIX B

The following parties gave oral testimony at our en banc hearing on children's television:

Panel 1 – Educational and Informational Programming: Will We Know It When We See It?

Capital Cities/ABC, Inc. – Jeanette B.Trias, President, ABC Children's Entertainment
Children Now – James P. Steyer, President
Children's Television Workshop – David V.B. Britt, President and CEO, and Sheldon Turnipseed, actor in CTW "Ghostwriter" series
Fox Children's Network – Margaret Loesch, President
National Broadcasting Company, Inc. – Dr. Karen Hill-Scott, independent consultant
National Education Association – Dr. Gary D. Watts, formerly Senior Director of NEA's National Center for Innovation and Assistant Executive Director of NEA's Center for Teaching and Learning
The National PTA – Catherine A. Belter, Vice President for Legislative Activity
The Walt Disney Company – Kenneth D. Werner, Senior Vice President of Business Affairs, Walt Disney Television, and Bill Nye, Creator and Host, "Disney Presents: Bill Nye the Science Guy"
World African Network – Phyllis Tucker Vinson Jackson, Executive Vice President

Panel 2 – Educational and Informational Programming: How Much Is Enough?

American Psychological Association – Dr. Dale Kunkel, Dept. of Communications, University of California, Santa Barbara
Peggy Charren, Founder, Action for Children's Television
Millicent Green, 7th-grade student and correspondent for Children's Express
Interfaith Broadcasting Commission – Dr. Richard McCartney, Chairman
Maryland Campaign for Kids' TV – Charlene Hughins Uhl, Director, Ready At Five
National Association of Broadcasters – Paul A. La Camera, Vice President and General Manager, WCVB-TV, Boston, MA
National Association of Television Program Executives – Bruce Johansen, President and COO of NATPE International
Squire Rushnell, former Vice President of Children's Television, ABC

Panel 3 – The Economics of Providing Educational and Informational Programming for Children

Association of Independent Television Stations, Inc. – Peter Walker, Vice President and General Manager, WGN-TV, Chicago, IL
CBS, Inc. - Johnathan Rodgers, President, CBS Television Stations Division
Center for Media Education – Dr. Kathryn Montgomery, President

Corporation for Public Broadcasting – Sheila Burke Tate, Chairman, CPB Board of Directors
Hastings College Social Research Center – Dr. James H. Wiest, Professor of Sociology and Director, HCSRC, and Dr. Ronald Davis, Associate Professor of Broadcasting and Director of Telecommunications, Hastings College
KIDSNET – Karen W. Jaffe, Executive Director
Shari Lewis
Nickelodeon – Geraldine Laybourne, President
The Univision Television Network – Jaime Davila, Chairman

(Panel participants also submitted written comments and/or summaries of their remarks.)

The following parties did not give oral testimony but submitted formal comments in connection with the en banc hearing:

Act III Broadcasting, Inc.
American Academy of Children's Entertainment
Jok Church
Nancy Kroll
The Media Institute
National Basketball Association
National Stuttering Project
Radio-Television News Directors Association and The Reporters Committee for Freedom of the Press

The following parties submitted formal reply comments in connection with the en banc hearing:

Association of Independent Television Stations, Inc.
Capital Cities/ABC, Inc.
Center for Media Education; American Association of School Administrators; Center for the Study of Commercialism; Peggy Charren; Consumer Federation of America; Council of Chief State School Officers; National Association of Child Advocates; National Association of Elementary School Principals; National Association for Families and Community Education; National Black Child Development Institute; National Council of La Raza; National Education Association; and National PTA.
Children's Television Workshop
Hastings College Social Research Center – Dr. James H. Wiest and Dr. Ronald D. Davis
National Association of Broadcasters
National Broadcasting Company, Inc.

Newton N. Minow with Craig L. LaMay, for the Public-Service Television Project of the American Academy of Arts and Sciences

Office of Communication of the United Church of Christ

Radio-Television News Directors Association and The Reporters Committee for Freedom of the Press

APPENDIX C

Initial Regulatory Flexibility Analysis

I. Reason for the Action: This proceeding was initiated to explore ways to implement the Children's Television Act of 1990 more effectively.

II. Objective of This Action: The actions proposed in this Notice are intended to give licensees clear, simple, and fair guidance regarding their children's programming obligation; to increase the flow of programming information to the public to facilitate enforcement of the Children's Television Act of 1990; and to allow the marketplace to determine to the fullest extent possible the means that licensees use to meet their programming obligation. Other objectives are to increase the amount of available television broadcast programming that meets the educational and informational needs of children and to promote efficiency in the production and distribution of such programming.

III. Legal Basis: Authority for the actions proposed in this Notice may be found in Sections 1 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 303; and Section 103 of the Children's Television Act of 1990, 47 U.S.C. § 303b.

IV. Number and Type of Small Entities Affected by the Proposed Rules: Approximately 1,200 existing commercial television broadcasters of all sizes may be affected by the proposals contained in this Notice.

V. Reporting, Record-keeping, and Other Compliance Requirements Inherent in the Proposed Rule: The Notice seeks comment on modifying current record-keeping and reporting requirements to include a requirement that licensees demonstrate compliance with proposed rule changes in their children's programming report, and seeks comment on requiring licensees to make programming information more accessible to the public. The Notice seeks comment on whether stations should be required to separate their children's programming reports from other material in the public inspection file and broadcast announcements to alert the public of the existence of such reports. It also seeks comment on a certification requirement that would replace the current requirement for submission of detailed documentation to the Commission for those stations able to certify that they have met a safe harbor processing guideline or progamming standard.

VI. Federal Rules Which Overlap, Duplicate, or Conflict with the Proposed Rule: None.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives of the Action: The proposals contained in this Notice are designed to encourage television broadcast programming that satisfies the requirements of the Children's Television Act of 1990, while minimizing the impact on small entities.

APPENDIX D

Distribution of Weekly TV Viewing by Children

Source: Nielsen Media Research, Television Audience 1993, at 14.

Separate Statement of
Commissioner James H. Quello

RE: ***Policies and Rules Concerning Children's Television Programming (MM Docket No. 93-48)***

This item has good news and bad news. The good news is, we have proposed a range of options for encouraging broadcasters to air more and better children's educational and informational programming. The bad news is, two of these three options, quantitative programming standards and probably processing guidelines, are First Amendment time bombs waiting to explode in a court of law.

The First Amendment will be uppermost in my thinking when I develop my ultimate position in this proceeding. At least one commentary published before the Commission's 1994 en banc hearing on Children's Television has asked "Who Speaks for the First Amendment?" Robert Corn-Revere, Who Speaks for the First Amendment?, Broadcasting and Cable, June 27, 1994 at 18, 20. *I* speak for the First Amendment in this proceeding, loud, long and clear. While the Chairman and Commissioners were advised by our General Counsel that quantitative programming standards or processing guidelines would pass constitutional muster, I beg to differ. As Broadcasting and Cable pointed out, the D.C. Circuit has suggested several times in recent years that the scarcity rationale, which was the basis of the Supreme Court's decision in Red Lion Broadcasting Co. v. FCC,395 U.S. 367 (1969) (broadcasters are entitled to less constitutional protection than traditional speakers due to scarcity of spectrum), may already have been rendered obsolete by the existence of new technology. Corn-Revere, supra at 18 (citing CBS, Inc. v. Democratic Nat'l Comm., 412 U.S. 94 (1973); FCC v. WNCN Listeners Guild, 450 U.D. 582 (1981); CBS, Inc. v. FCC, 453 U.S. 367 (1981); FCC v. League of Women Voters, 468 U.D. 364 (1984)). Indeed, in cases adopted since Red Lion, the trend has been to restrict the government's ability to intrude on editorial decisions and instead to place greater reliance on broadcasters' discretion. See id.

In perhaps the strongest statement to date, the Supreme Court last summer, in a ruling on the must carry provisions of the 1992 Cable Act, stated:

> The FCC's oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations; for although "the Commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.

Turner Broadcasting System, Inc. v. FCC, 114 S. Ct. 2445, 2463 (quoting Network

Programming Inquiry, Report and Statement of Policy, 25 Fed. Reg. 7293 (1960)), reh'g denied, 115 S. Ct. 30 (1994). Quantitative programming standards or processing guidelines, in my view, would fall squarely within this warning that the FCC ought not impose on broadcasters their own notion of what the public ought to hear. We ignore this potent warning from the Supreme Court at our peril.

Congress itself recognized the importance of the First Amendment by devoting a great deal of discussion (seven pages) in the legislative history to the constitutionality of the programming portion of the Children's Television Act. H.R. 385, 101st Cong., 1st Sess. (1989). Congress concluded that, after close examination of the constitutionality of the legislation, "imposing...an affirmative obligation on licensees to serve the special needs of children in no way would violate the Constitution." Id. Accordingly, Congress directed the FCC, in ensuring that licensees include as part of their overall programming, programming that serves the educational and informational needs of children, to review broadcasters' applications for license renewal for compliance with the Act. Congress *did* adopt quantitative commercial limits; the fact that it *did not* adopt quantitative programming standards or processing guidelines, with an extensive First Amendment analysis as a backdrop, speaks volumes.

In addition to the First Amendment implications, I am concerned with the proposal to adopt quantitative programming guidelines or processing standards in light of the significant changes in the video programming marketplace since passage of the Children's Television Act in 1990. Let me clarify that I take very seriously the mandates of the Act, and our obligation to enforce these mandates. However, I also would argue that the Children's Television Act was sufficiently broad so as not to require us to make decisions in a regulatory vacuum. We should seriously consider the need for numerical requirements for children's television programming in a world that now includes, or will soon include, cable television (which brings us Nickelodeon, the Learning Channel, Discovery, the Disney Channel), direct broadcast satellite, wireless cable, video dialtone, video cassette recorders, and interactive video and computer programs. To ignore the realities of the marketplace in reaching a decision in this proceeding would be nothing short of regulatory malfeasance.

There are several good proposals in this NPRM which, together, could result in an effective means of encouraging broadcasters to improve on their children's programming record, without imposing unnecessarily on their editorial discretion. These proposals include: (1) clarifying the definition of educational and informational programming "specifically designed" to serve the needs of children; (2) requiring broadcasters to specify in writing in a children's programming report the educational objective of the program and the target child audience; (3) providing the public with more information regarding the educational and informational programming provided by broadcasters, including placing their children's programming report in a separate "children's file" at the same location as the station's public inspection file; (4) urging

the public to use this information by first approaching the stations in their community if they have any concerns about the amount and type of children's programming being aired before complaining to the Commission; and (5) monitoring for a specified period of time the progress of broadcasters under the new definitions and improvements in information flow. These proposals, taken together, could go a long way toward improving the amount of educational and informational programming for children while at the same time preserving the First Amendment rights of broadcasters.

One final aside. Although not before us in this item, there has been much talk recently about auctioning broadcast spectrum, or exchanging spectrum for an agreement from broadcasters to air more children's programming or to provide free time to political candidates. I strongly oppose any scheme to auction off spectrum used for broadcasting. To the extent such spectrum is used to offer subscription-based services, I think it is reasonable to require broadcasters to pay a fair value for that use. However, by "fair value" I do not mean to encourage the auctioning of the spectrum or the extraction of any content-based quid pro quo on the altar of Commission regulation. I consider this type of "social compact" nothing more than regulatory extortion.

STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT
CONCURRING IN PART/DISSENTING IN PART

In Re: Policies and Rules Concerning Children's Television Programming; Revision of Programming Policies for Television Broadcast Stations (Notice of Proposed Rule Making)

Today, the Commission adopts a Notice of Proposed Rule Making ("NPRM") which sets forth a proposed modification of the definition of children's educational and informational programming that complies with the Children's Television Act ("CTA"), and seeks to facilitate the public's monitoring of their local broadcasters' compliance under the CTA. The Commission also proposes to elect one of several options designed to address a perceived dearth of children's educational and informational programming upon clarification of the definition of such programming under the CTA. These options include monitoring the industry for a specified period of time or the adoption of quantitative standards to be applied upon submission of a licensee's renewal application either as a processing guideline or a standard. The Commission also seeks comment on a proposal to allow a station to fulfill its CTA obligation, in part, by sponsoring programs on other stations in the same market. I concur with the Commission's decision to modify the definition of educational and informational programming in order to provide clarification for both broadcasters and the public alike. Though a clear statement of opposition is unusual at this stage of a rule making, I must dissent with regard to the Commission's consideration of certain portions of the definition proposal, quantitative standards for broadcasters, and to the sponsorship program.

In March 1993, the Commission issued a Notice of Inquiry ("NOI") seeking comment on whether a need exists to clarify the children's educational and informational programming requirements.[1] We also sought comment on whether to adopt guidelines for the amount of core programming required to comply with the Act. I supported the NOI because, at the time, the information available to the Commission substantiated allegations that there was an insufficient increase in the amount of children's programming that complied with the CTA. My concern was that this could have been due, in part, to the lack of clarity the definition provided regarding the scope of broadcasters' children's educational and informational programming obligations.

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[1] Notice of Inquiry, MM Docket No. 93-48, 8 FCC Rcd 1841 (1993).

I also supported the NOI because it clearly indicated that the Commission would not establish quantitative standards to address its concerns regarding a lack of children's programming. In fact, we specifically stated that Congress' express preference was to avoid quantitative standards and to rely on the licensee's judgment in meeting children's programming needs.

I believe that circumstances have since improved and some parties contend that there has been an increase in children's programming.[2] Unfortunately, the Commission has summarily dismissed this information by concluding that even if we were to accept that the amount of educational programming has increased, the degree of that increase has been modest. In my opinion, however, this NPRM marks a clear and substantial departure from prior Commission actions.

QUANTITATIVE GUIDELINES

Congress, pursuant to the CTA, gave the Commission a clear mandate--to increase the amount of children's programming. In response to that directive, the Commission undertook a rulemaking and adopted rules pursuant to a Report and Order ("R&O")[3] that, among other things, set forth the definition of children's educational and informational programming and the requirement that a licensee be in compliance with these requirements when renewing its license. Yet, the Commission emphatically stated at that time (and on two other occasions) that it would not rely on a quantitative standard to achieve that goal.[4]

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[2] See, generally NAB En Banc Reply Comments which contends that the average commercial station aired slightly more than 2 hours per week of regularly scheduled, standard-length educational and informational programming in the fall of 1990 and 3.6 hours per week of such programming in the fall of 1993. See also, INTV En Banc Reply Comments providing data which demonstrates an increase in the amount of this programming from the first quarter of 1990 to the first quarter of 1994 for its members who believed that they had complied with the CTA.

[3] See Report and Order, In the Matter of Policies and Rules Governing Children's Television Programming, MM Docket No. 90-570 and 83-670, 6 FCC Rcd 2111.

[4] In the R&O, we stated that "[t]he Act imposes no quantitative standards and the legislative history suggests that Congress meant that no minimum amount criterion be imposed...We thus decline to establish any minimum programming requirement for licensees for renewal review independent of that established by the Act." See, R&O at 24. Also, in our Memorandum Opinion and Order in this proceeding, we stated that "we agree with NAB, however, that [quantitative processing] guidelines, even if they do not automatically result in sanctions if violated, conflict with Congressional intent not to establish minimum criteria that would limit broadcasters programming discretion." Memorandum Opinion and Order, MM Docket Nos. 90-570 and 83-670, FCC Rcd 2111 (1991). Finally, in the NOI, we noted that "consistent with Congress' express preference for avoiding quantitative standards and for relying on licensee judgment in meeting children's programming needs, we have consistently favored statements of purpose over specific regulatory

We admit in this NPRM, that since the adoption of that R&O, the Commission has seen an increase in the amount of educational and informational programming. Now, despite this acknowledgement and without the benefit of conclusive data to quantify that increase, the Commission has determined that a shortage still exists today. I disagree with this approach. It seems that the more appropriate step would have been to first determine the level of programming that could be deemed to satisfy the educational and informational needs of children, then to determine whether a sufficient amount of such programming exists in the market and, if not, adopt measures to increase the programming under a modified definition.

Two of the options that the Commission presents as proposals for further action to increase the amount of children's programming are premised on the establishment of a quantitative standard. Indeed, some have argued that there is an administrative benefit for the Commission, broadcasters and the public--to know exactly how much educational and informational programming is required of each broadcaster. Moreover, as the NPRM, points out, there is no statutory prohibition under the CTA or within the CTA's legislative history that precludes the Commission from setting these standards. However, I believe that the Commission, by proposing to take this alternative measure, approaches content-based regulation that is violative of broadcasters' First Amendment right to free speech.

In the prior decisions in this proceeding, I based my support on the fact that: (i) the Commission was able to satisfy the requirements of the Act without intrusive regulation and (ii) broadcasters are afforded discretion to determine the type and amount of educational and informational programming that they need to air in order to satisfy their obligation under the Act. I cannot now consider this quantitative proposal, as a guideline or as a standard, because it represents a clear departure from my policy views with respect to this issue. While I believe that broadcasters can do better, I have been and continue to be unwilling to support the notion that we, by virtue of our positions as regulators, are entitled to infringe upon the rights of broadcasters by unilaterally dictating the amount and type of programming that the Commission deems is appropriate for carriage in accordance with the Act.[5]

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requirements." We expressed a belief that licensees must, for the most part, themselves define the appropriate scope of their service to children in their communities. See, NOI, at 5.

[5]Interestingly enough, some parties have argued that certain cartoons should not be considered informational or educational programming for purposes of satisfying the requirements under the Act. However, in the April 12, 1991 Report and Order, we indicated that "[w]here determinations of whether a program qualifies as "educational and informational" are in doubt,...[w]e will rely on

Further, I question the Commission's proposed disparate treatment of community-oriented interest programming such as public affairs and news programming as compared to children's educational and informational programming. A broadcaster has an affirmative obligation to carry and to maintain an updated list that exemplifies its most significant treatment of community issues for the purpose of renewing its license. Despite this public interest obligation, the Commission has not proposed or established similar quantitative requirements for these other forms of public or community-oriented programming.

QUALITATIVE STANDARD

While I support the Commission's tentative conclusion to clarify the definition of educational and informational programming, my dissatisfaction regarding the definition of "core" educational and informational programming is primarily focused on specific aspects of the requirements. I do not believe that the Commission should require that the program be aired between the hours of 6:00 a.m. and 11:00 p.m. nor am I willing to support a requirement that a program be regularly scheduled[6]. In both instances, I am again concerned about the First Amendment implications of such requirements. With respect to the requirement that the program be identified as educational at the time it is aired, I will be particularly interested in the economic impact that broadcasters will be forced to bear in order to comply with this obligation as compared to the projected benefit to the public.

While I am pleased that the public will be better informed about the time and a broadcasters' rationale for deeming a program educational under the proposed modifications, I am not convinced that the public has not previously been so informed. As it now stands, broadcasters have an affirmative obligation to maintain their children's programming records as part of their issues list or maintain them separately.[7] Arguably, lack of access may not be the reason for lack of participation by the public in the monitoring process.

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the guidance given in the legislative history, including the specific examples cited above, in ruling on the sufficiency of such demonstrations". See, Report and Order, In the Matter of Policies and Rules Concerning Children's Television Programming, 6 FCC Rcd 2111, para.26 (1991). The examples included programs such as "Saved By the Bell" and "The Smurfs".

[6]While the Commission seeks comment on the definition of "regularly scheduled" programming, I believe that a broadcaster should be credited with any programming that satisfies the definition even if it is not aired at regularly scheduled times.

[7]See, Report and Order para. 31.

Bearing that in mind, I am concerned that we not unintentionally encourage censorship of broadcast programming by individuals or communities that have different views about educational programming that satisfies the proposed definition. Therefore, I will review the comments regarding proposals seeking to facilitate public participation with great interest to make certain that the Commission does not inspire unfair and costly challenges with respect to educational and informational programming.

SPONSORSHIP PROGRAM

The NPRM seeks comment on a proposal to allow broadcasters to satisfy through educational and informational programming through a sponsorship program. In this regard, should the Commission develop a quantitative standard, a broadcaster would be given the option to air the entire amount of its quantitative obligation or to air a portion of its obligation and provide financial support for programming aired on other stations in its market. The Commission tentatively concludes that a licensee may not satisfy its entire obligation by sponsoring programming on other stations in the market. However, we must bear in mind that the Commission grants a license to an individual broadcaster, not to a market of broadcasters. Therefore, although we allow for contributions toward the children's educational programming obligation for nonbroadcast efforts,[8] I am not convinced that such sponsorship for core requirements should be permissible.

Finally, I have concurred in part because today's decision follows the NOI which seeks comment on a modification of the definition for children's educational and informational programming. However, I am particularly troubled by the Commission's willingness to consider the abandonment of its prior policy regarding quantitative standards or processing guidelines and to allow broadcasters to enter into sponsorship arrangements for the satisfaction of their obligation under the CTA. In the end, should the Commission opt for these changes, I believe it will be faced with constitutional challenges that may further delay the increase in educational and informational programming that its seeks to secure.

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[8] See Report and Order, para. 29.

SEPARATE STATEMENT
OF
COMMISSIONER SUSAN NESS

Re: *Policies and Rules Concerning Children's Television Programming (MM Docket No. 93-48)*

The central goal established by Congress in the Children's Television Act is for television broadcasters to air programming that serves the educational and informational needs of our nation's children.

Our task is to implement better that legislative directive. My preference would have been for broadcasters voluntarily to have met the needs of the children in their audience. Some dedicated broadcasters are working diligently toward that end. But from the record developed in response to our Notice of Inquiry and the testimony at our en banc hearing, I have concluded that the programming mandate of the Act generally is not being fulfilled.

As we take our next steps to implement the Act, it is important to maintain a steady focus on what it is we are trying to accomplish. My own perspective is that we should emphasize quality of programming -- programming that children will want to watch and that responsible parents will want their children to watch. We need to find better ways to promote the widespread availability of programming that educates, enlightens, entertains, excites, and ennobles -- all at the same time.

I see three major impediments to increasing the availability of quality children's programming: the production cost of such programming, the difficulty of integrating it with other elements of the program schedule, and the need to promote it so that parents and children know when to tune in. In this Notice we seek comment on creative proposals to encourage broadcasters to overcome these hurdles.

I hope that broadcasters will find new ways of funding programming that serves educational and informational needs. The Wisconsin State Broadcasters

Association, for example, has established a foundation that funds the production of quality programming that is available to its members on a non-exclusive basis at a nominal cost. Not surprisingly, a large number of broadcasters in the state choose to air this programming. Bill Nye, The Science Guy, has teamed up with the National Science Foundation, public television, and Disney to produce excellent programs that are aired on both commercial and public TV. A constructive dialogue may yield useful lessons on other workable models.

Scheduling is also important. The record clearly demonstrates that regularly scheduled programs attract larger audiences. It is also important that the programming fit with the surrounding schedule; I, for one, am not enthusiastic about sandwiching children's programming in between tabloid-style talk shows. One idea suggested in the Notice, and supported by provisions in the Act, is for one or more stations in a market to air substantial amounts of children's programming with support from other stations in the market. Other approaches to scheduling issues also need to be explored.

Promotion is another important consideration. Programming that is designed to educate and inform cannot serve its purpose if parents and children don't know it is there. A requirement that broadcasters identify what they believe to be their educational and informational programs to newspapers and other TV program guides may be a necessary and minimally burdensome way to ensure that the public is informed.

Over the past months I have been encouraging broadcasters and others to tender creative, market-friendly approaches for improving compliance with the Children's Television Act. We have heard some good ideas, but we have a long way to go.

This Notice presents several specific proposals, and I look forward to studying the comments they engender. In particular, I am interested in exploring the use of processing guidelines as a vehicle for encouraging increased compliance. Broadcasters are entitled to know what we expect of them, and a "safe harbor" approach will provide a "constitutionally friendly" measure of certainty while still allowing the flexibility to accommodate broadcasters who choose to emphasize quality and community service. It is not our role to prescribe content or to force broadcasters into a common mold.

I look forward to a dialogue involving all interested parties. The means to meet our goals must be developed and implemented through cooperative efforts of broadcasters, program creators, advertisers, parents, educators, newspaper publishers, and government officials.

I care about the programs children watch. Broadcasters have a special obligation to serve the public interest. More than one-third of TV households do not subscribe to cable, and many children who do not have access to cable or satellite dishes live in low-income homes. They deserve our help.

We need to work together to address what is, fundamentally, a common objective. We need to think these ideas through, and we need to make genuine progress in the near-term.

SEPARATE STATEMENT OF

COMMISSIONER RACHELLE B. CHONG

Re: *Policies and Rules Concerning Children's Television Programming, MM Doc. No. 93-48*

Who holds the souls of children, holds the nation.
Anonymous

Today we add yet another page to the already lengthy chronicle of the FCC's regulation of children's television programming on the commercial television broadcast medium. Like the many Commissioners that have preceded us, we propose this action with due respect for our cherished First Amendment rights. While I believe that we should tread carefully in this constitutionally sensitive area, I do not believe that we are paralyzed. The First Amendment clearly permits narrowly tailored regulations designed to fulfill a compelling government interest. I cannot think of a more compelling government interest than that of protecting and nurturing our most precious resource – our children.

Congress has mandated that the Commission implement the Children's Television Act of 1990. The purpose of the Act is "to increase the amount of educational and informational broadcast television programming available to children . . . ."[1] Thus, I believe our foremost goal should be to ensure that our rules provide incentives for commercial television broadcasters to increase the amount of children's educational and informational programming aired. Given our existing advertiser-supported, commercial market structure, I recognize that it is not easy for broadcasters to make a commitment to increase such programming. This is why Congress believed government intervention was needed.

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[1] Children's Television Act of 1989, Senate Committee on Commerce, Science and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess. 1, at 1 (1989) ("Senate Report").

As far back as 1960, the Commission recognized that broadcasters have a duty as public trustees of the airwaves to provide programs for children, as well as for the adults in their audience.[2] Too often, that duty has taken a back seat to commercial gain. Taking the long view of how children's programming has been treated in the past decade and a half, I find disappointing the historical performance of commercial television broadcasters in the area of children's educational and informational programming. In discussing this issue with various network representatives and broadcasters, I have discovered that, among many, there is a distinct lack of enthusiasm and sincere commitment to fulfilling the Act's goal. Their proffered reasons can be boiled down to one primary motivator – the opportunity cost of airing children's educational television (even if well done) vis-a-vis a general audience program for adults is simply too high.

As a result, some parties to this proceeding have argued that children's educational programming has received "second class status" from broadcasters. Such programs have been shunted into marginal time slots, i.e. predawn time slots when not many children may be watching television,[3] where broadcasters can discharge their responsibilities under the Act with the minimal amount of economic impact. Children's advocates argue that the best time slots go to children's shows that feature licensed toy products, not educational programs. They further contend that children's educational programs often do not enjoy adequate promotion or regular time slots where they can build an audience, alleging that such shows are placed in poor time slots where they are often preempted by overtime sporting events.[4] Thus, the evidence in the record supports the fact that children's educational and informational programs face an uphill battle to succeed in a commercial environment.

It is my opinion that bold and creative approaches are necessary in order to tap television's tremendous potential to teach our children. Television can help impart to our children information, skills and prosocial behavior, while still entertaining them and stimulating their curiosity to explore the world around them. I believe that we are taking an important step forward in clarifying our rules, making it clear that we expect significant

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[2] Report and Statement of Policy Re: Programming, 20 Rad. Reg (P&F) 1901 (1960)("Programs for Children" was listed as one of the "major elements usually necessary to meet the public interest, needs and desires of the community" as developed by the industry and recognized by the Commission); see also Children's Television Report & Policy Statement, 50 FCC 2d 1, 4 (1974), Senate Report at 2.

[3] Testimony of Peggy Charren, Founder, Action for Children's Television, at FCC En Banc Hearing on Children's Television, at 12 (June 28, 1994)("Charren Testimony"); Testimony of Center for Media Education, by Patricia Aufderheide, Ph.D. and Kathryn Montgomery, Ph.D, at FCC En Banc Hearing on Children's Television, at 1-2 (June 28, 1994)("CME Testimony").

[4] CME Testimony, at 1.

and substantial increases in the amount of children's educational television, and urging broadcasters to voluntarily fulfill their duties as public trustees of the airwaves.

I am hopeful that the specific proposals we are making today will prove effective. We are specifically proposing to clarify our definition of qualifying children's educational and informational programming. We take this action because some broadcasters have chosen to claim cartoons, news programs, or some general audience programs of dubious educational value in their renewal applications as qualifying children's educational and informational programming.[5] Many parties have urged the Commission to clarify our current definition so there is no confusion about what programming qualifies under the Act.[6] I strongly support the proposed clarified definition.

On a related issue, I am troubled by the apparent failure of some broadcasters to comply with our modest reporting requirements demonstrating the extent to which the licensees have responded to the educational and informational needs of children with their programming. Under our present policy, we simply require the licensee to submit records indicating the date, time, duration and "a brief description of any programming claimed as educational."[7] A party that studied license renewal claims in 1993 found that more than a quarter of all stations failed to comply with these reporting requirements.[8] I emphasize our expectation that our licensees comply with our reporting requirements. This important information assists the Commission in determining whether an overall increase in the

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[5] Testimony of Dale Kunkel, Ph.D., Department of Communications, UC Santa Barbara, on behalf of the American Psychological Association, FCC En Banc Hearing, at 4 (June 28, 1994)("Kunkel Testimony")(citing program titles including"Teenage Mutant Ninja Turtles" and "The Jetsons"); Charren Testimony, at 7 (citing 1992 report on industry compliance with the 1990 law which stated that stations claimed that "The Jetsons," "Super Mario Brothers," "Leave it to Beaver," and "G.I. Joe" were specifically designed to educate children).

[6] Id.

[7] Report and Order, In the Matter of Policies and Rules Concerning Children's Television Programming, 6 FCC Rcd. 2111, para. 31 (1991)("[A]t a minimum, as the legislative history suggests, such record should indicate the time, date, duration and a brief description of the program or non-broadcast effort the licensee has made."); see also Memorandum Opinion and Order, In the Matter of Policies and Rules Concerning Children's Television Programming, FCC 91-248, at para. 47 (1991)("[C]ommercial licensees must submit all of their children's program lists at renewal time . . . . Interested members of the public have the right to know the basis for a claim that a station has met the educational and informational needs of children.")

[8] More than one-fifth of stations did not identify any of their claimed educational content as "specifically designed for children" while others submitted only lists of their children's program titles, omitting other related information such as days/times of broadcast or providing no content descriptions. Kunkel Testimony, at 4.

amount of children's educational programming has been achieved. This is necessary for us to measure compliance with the Act.

We are also proposing actions today that will assist the public, especially parents, educators and child advocacy groups, in scrutinizing the efforts of broadcasters to provide children's educational and informational programming. I support these efforts to make this process more "user friendly" to the public. I believe that public accountability of the broadcasters to their viewers on this issue could be beneficial.

It is my hope that this improved flow of information and accountability will encourage broadcasters to interact with these types of groups and voluntarily improve their service to the needs of children within their service areas. As a first step, I encourage all those involved in the effort to bring educational programming to our children – broadcasters, children's television producers, major advertisers, network executives, parents, educators, child advocacy groups and government officials – to meet and work together to make more programming available. Perhaps networks, broadcasters and program producers will forge new partnerships and explore new approaches to making attractive children's educational and informational programming. We should plot a course together in a way that is sensible, does not require much regulatory oversight, and results in better and more children's educational programs.

As to what path we take next, we have laid out a number of options for comment. I urge all parties to consider these options carefully and give us as much information as possible on their benefits and detriments in the real world. I am keeping an open mind as to what path we should take next, but it is my hope that broadcasters will take some voluntary steps that would obviate the need for regulatory action.

In seeking creative approaches to children's educational television, I have looked outside of our borders for new ideas and inspiration. To this end, I attended the recent World Summit on Children and Television in Melbourne, Australia. There, I gained a deeper understanding of children's needs as to the television medium and approaches taken by other countries as to children's television.

I discovered that there is a great commitment to children's television in many other countries. Some countries have imposed quantitative standards on commercial broadcasters to air children's educational programming, while others have assigned the duty primarily to public television. For example, in Australia, commercial broadcasters are required to air 7.5 hours per week of children's programming, of which a certain portion must consist of Australian-content drama programs.

Australia has also established an Australian Children's Television Foundation, a national non-profit company supported by the government. This foundation produces quality children's television shows for domestic and international audiences, and provides seed money to developers of children's programming. Other countries, such as Great

Britain, Japan, and Sweden, generate significant funding for the production of noncommercial television programming, including children's programming, using methods such as an annual broadcast license fee imposed on every household.

Another idea discussed at the World Summit was the voluntary use of rating icons by broadcasters to identify children's programming and provide other helpful information to parents about the program.[9] Broadcasters and program producers could work together to voluntarily develop a system of ratings icons so that parents have more information to enhance their ability to monitor their children's TV viewing habits.

Perhaps we can learn from the experiences of other countries in achieving the goals of our Act. I bring these examples to light to encourage creativity in our approach.

Finally, I believe that we must not lose sight of our ultimate objective here, which is to make use of the power of television to capture our children's imaginations and teach them about our world. Let's take advantage of the fact that children <u>like</u> television. When it is done well, children's educational television should appeal to their sense of humor and to their hearts and minds as well. If we dare to think creatively and selflessly, we can harness television's enormous potential to shape our nation's youth into better citizens.

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[9] The Entertainment Software Rating Board ("ESRB") has developed a voluntary system under which interactive entertainment products, including computer and video games, are rated by an independent rating board to give parents and consumers information they need to make informed purchasing decisions. Products are rated using five age-based categories: Early Childhood, Kids to Adults, Teen, Mature and Adults Only. The rating is placed on the outside of the product package, in addition to short phrases called "descriptors." These descriptors give more detail about the product in terms of violent content, language, sexual themes and other areas of concern to parents. Such rating categories and descriptors could be adaptable to a voluntary rating scheme for children's television shows. Such rating icons and descriptors would appear prior to the show airing. The ESRB is funded by the software industry and by fees are generated by the rating process.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	FCC 95-200
	)	
Local Exchange Carriers' Rates,	)	
Terms, and Conditions for	)	
Expanded Interconnection Through	)	
Virtual Collocation for	)	
Special Access	)	CC Docket No. 94-97,
and Switched Transport	)	Phase I

REPORT AND ORDER

Adopted: May 11, 1995; Released: May 11, 1995

By the Commission:

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I. INTRODUCTION

1. On February 28, 1995, the Common Carrier Bureau (Bureau) released the *Phase I Designation Order*,[1] which designated key rate level issues in the first phase of the Bureau's investigation of the virtual collocation tariffs filed by the Tier 1 local exchange carriers[2] (LECs) listed in Appendix A.[3] Specifically, the Bureau designated for investigation: (1) whether the overhead loadings[4] established in the LECs' virtual collocation tariffs are justified; and (2) whether the maintenance-related charges in Bell Atlantic's virtual collocation tariffs are justified.[5] The LECs' virtual collocation tariffs were the subject of the Bureau's *Virtual Collocation Tariff Suspension Order* in this docket, which partially suspended the LECs' virtual collocation tariffs pursuant to Section 204(a) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 204(a), initiated an investigation into the lawfulness of these tariffs, imposed an accounting order, rejected patently unlawful terms and conditions, and ordered other tariff revisions.[6]

2. Based on our review of the LECs' direct cases and accompanying cost support data filed in response to the *Phase I Designation Order*, we conclude that most of the LECs have failed to meet their Section 204(a) burden of demonstrating that their overhead loading levels and, consequently, their virtual collocation rates, are just and reasonable.[7] We

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[1] Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Order Designating Issues for Investigation, DA 95-374 (rel. Feb. 28, 1995) (*Phase I Designation Order*).

[2] Tier 1 local exchange carriers are companies having annual revenues from regulated telecommunications operations of $100 million or more for a sustained period of time. Commission Requirements for Cost Support Material To Be Filed with 1990 Annual Access Tariffs, Order, 5 FCC Rcd 1364 (1990).

[3] Appendix A provides the full and abbreviated names of these LECs as used in this Order.

[4] An overhead loading is the amount by which the direct costs of a service are increased in order to recover overhead costs, which are common costs not directly attributable to a particular service. *See* Ameritech Operating Companies, *et. al.*, CC Docket No. 93-162, Order, 8 FCC Rcd 4589, 4594 n.70 (1993). Overhead costs include general administrative expenses, general support facilities, and other costs, such as marketing, that are not assigned to a specific service.

[5] We will address this issue in a subsequent order in this docket. *See* note 39, *infra*.

[6] Ameritech Operating Companies, *et. al.*, CC Docket No. 94-97, Order, DA 94-1421, 10 FCC Rcd 1960, Appendix C (1994) (*Virtual Collocation Tariff Suspension Order*).

[7] Section 204(a)(1) provides, in pertinent part, that "the burden of proof to show that the new or revised charge, or proposed charge, is just and reasonable shall be upon the carrier ...." 47 U.S.C. § 204(a)(1).

therefore find these rates to be unlawful. In order to advance the competitive goals of this Commission's new mandatory virtual collocation policy, we prescribe in this Order the maximum permissible overhead loading levels for these LECs' virtual collocation rates.

3. As set forth below, we prescribe on a permanent basis the maximum permissible overhead loading levels for virtual collocation rates filed by Bell Atlantic, BellSouth, GTE, United, and US West. In addition, we prescribe on an interim basis the maximum permissible overhead loading levels for SWB pending further investigation of its overhead loadings. At the completion of our investigation, we will prescribe on a permanent basis just and reasonable overhead loading levels for SWB, and, if necessary, for Ameritech and CBT.[8] Our interim prescription is subject to a two-way adjustment mechanism that will protect both customers and LECs in the event refunds or supplemental payments are warranted at the conclusion of our investigation.

II. BACKGROUND

4. In the *Virtual Collocation Order*,[9] this Commission adopted virtual collocation as the basic architecture for providing expanded interconnection services.[10] We required Tier 1 LECs, other than participants in National Exchange Carrier Association pools, to provide expanded interconnection for special access and switched transport services[11] through generally available virtual collocation arrangements.[12]

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[8] As discussed in para. 17, *infra*, SWB, Ameritech and CBT requested confidential treatment of certain cost support data filed with their direct cases. We note that the Bureau's *Virtual Collocation Tariff Suspension Order* did not adjust the overhead loading levels for Ameritech, CBT, and two study areas within the United companies. *See Virtual Collocation Tariff Suspension Order*, Appendix C at 2.

[9] Expanded Interconnection with Local Telephone Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994) (*Virtual Collocation Order*).

[10] Expanded interconnection is a LEC offering that enables parties to compete on a facilities basis with certain LEC services by interconnecting their circuits with those of the LEC at the LEC central office. Expanded interconnection through virtual collocation enables an interconnector to terminate its circuits in central office transmission equipment owned by the LEC and under the physical control of the LEC. The interconnector has the right to designate its choice of central office equipment, which is dedicated to the exclusive use of the interconnector, and installed, maintained and repaired by the LEC. *Virtual Collocation Order*, 9 FCC Rcd at 5158.

[11] Interstate access is a service traditionally provided by LECs that enables interexchange carriers and other customers to originate and terminate interstate telephone traffic. *Id.* at 5155 n.2.

[12] *Id.* at 5156.

5. In adopting pricing rules to govern the provision of virtual collocation services, we stated in the *Virtual Collocation Order* that LECs' rates must be derived from the direct costs of providing expanded interconnection service, plus a reasonable amount of overhead costs.[13] We expressed concern that LECs could attempt to load excessive overhead costs on their interconnection charges. Based on the extensive record then before us, we reaffirmed our decision in earlier orders that LECs may include no more than uniform overhead loadings in their rates for expanded interconnection services, or must justify any deviations from uniform loadings.[14] In other words, LECs may not recover a greater share of overhead costs in their rates for virtual collocation services than they recover in rates for "comparable services," absent justification.[15] The Commission explained that the LECs have the burden of demonstrating that their interconnection charges meet this overhead loading standard, and are otherwise just, reasonable, and not unreasonably discriminatory. We noted that we would scrutinize carefully the overhead costs that the LECs propose to recover through interconnection charges to ensure that they are reasonable.[16]

6. The *Virtual Collocation Order* directed LECs to file tariffs offering virtual collocation services[17] on September 1, 1994, to become effective on December 15, 1994.[18]

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[13] *Id.* at 5189-91. In the *Special Access Expanded Interconnection Order*, we required the LECs to create new connection charge elements for expanded interconnection rather than formally unbundle the special access rate structure into separate transmission and connection charges, because the services provided to the interconnectors are not entirely parallel to the services provided to the LEC special access customers. Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7425 (1992) (*Special Access Expanded Interconnection Order*).

[14] *Virtual Collocation Order*, 9 FCC Rcd at 5189.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 5156, 5167-68. The Commission, however, exempted LECs from the mandatory virtual collocation requirement in central offices in which they chose to provide a Title II physical collocation offering. *Id.* at 5156, 5211.

[18] In conjunction with its tariff filing, SWB requested confidential treatment of its cost support submission on the grounds that public disclosure would reveal proprietary vendor data. On November 1, 1994, the Bureau ruled that SWB's cost support submission was exempt from disclosure under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), subject to limited disclosure to parties to the proceeding under a protective order. *See* Letter from Kathleen M.H. Wallman, Chief, Common Carrier Bureau, to MFS, MCI, and ALTS, Freedom of Information Act Request Control Nos. 94-310, 325, 328, DA 94-1214, rel. Nov. 1, 1994, *app. for rev. pending.* (*November 1, 1994 FOIA Ruling*).

The Bureau's *TRP Order*,[19] released concurrently with the *Virtual Collocation Order*, required LECs to file certain cost support data in connection with their rates for virtual collocation services. In particular, the Bureau directed LECs to provide information regarding their overhead loadings for virtual collocation services and for their comparable DS1 and DS3 services.[20]

7. The Bureau specified that comparable services include all point-to-point DS1 and DS3[21] special access and switched transport services.[22] The Bureau determined that LECs offer these point-to-point services in two basic forms: (1) as a service providing channel termination without interoffice mileage, connecting the customer premise and the nearest central office; and (2) as a service providing both channel termination and interoffice mileage, connecting the customer to an additional central office.[23] The Bureau also stated that comparable DS1 and DS3 services include the LECs' generic electrical or optical services, discounted volume and term services, and specialized service offerings, such as self-healing networks.[24]

8. On September 1, 1994, the LECs listed in Appendix A filed interim and permanent virtual collocation tariffs and cost support data. The interim tariffs, which were identical in substance to the LECs' permanent virtual collocation tariffs, ensured the

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[19] Commission Requirements for Cost Support Material To Be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport, Tariff Review Plan Order, 9 FCC Rcd 5679 (1994) (*TRP Order*).

[20] *TRP Order*, 9 FCC Rcd at 5683.

[21] DS1 is a digital high-capacity service with transmission capability equal to 24 voicegrade channels with a total transmission rate of 1.544 megabits per second; a DS3 is a digital high-capacity service with transmission capability equal to 28 DS1s.

[22] *TRP Order*, 9 FCC Rcd at 5682-83. A point-to-point service provides a connection between the customer premise (which, for an interexchange carrier, would likely be its point of presence) and another location (which may be another customer premise or a LEC central office). All point-to-point services employ the same basic types of equipment, such as a central office entrance cable, an equipment bay containing an optical line terminating multiplexer, and a cross-connect. *Virtual Collocation Tariff Suspension Order* at para. 17. The cross-connect consists of a short cable that connects the LEC distribution frame to the central office electronic equipment dedicated to the interconnector.

[23] *Virtual Collocation Tariff Suspension Order* at para. 18. For a description of services providing channel termination and channel mileage, *see* note 92, *infra*.

[24] *TRP Order*, 9 FCC Rcd at 5684-85. The Bureau also required LECs to submit direct cost studies for their point-to-point services, as well as the costing methodologies used to develop the direct costs. *Id.* at 5685. *See also Virtual Collocation Tariff Suspension Order* at para. 18.

uninterrupted availability of tariffed expanded interconnection service during the period between the effective date of the interim virtual collocation tariffs and December 15, 1994, the date the permanent virtual collocation tariffs were to become effective. On September 2, 1994, following a preliminary review of the LECs' interim tariffs, the Bureau concluded that these tariffs raised significant questions of lawfulness that warranted suspension for one day, investigation, and imposition of an accounting order.[25] Following that one day suspension, the LECs' interim tariffs took effect on September 4, 1994, subject to investigation.

9. On December 9, 1994, the Bureau released the *Virtual Collocation Tariff Suspension Order* which, *inter alia*, suspended for one day the permanent virtual collocation tariffs, initiated an investigation into the lawfulness of these tariffs, and imposed an accounting order.[26] With certain exceptions discussed below, the permanent tariffs took effect on September 15, 1994, subject to investigation.

10. In the *Virtual Collocation Tariff Suspension Order*, the Bureau found that the LECs' level of overhead loadings was a primary factor affecting the apparently excessive virtual collocation rates. To determine whether the LECs had justified their proposed overhead loadings, the Bureau utilized the overhead loading standard set forth in the *Virtual Collocation Order*. The Bureau's review of the record revealed that none of the LECs used uniform loadings for all of their comparable DS1 and DS3 services. Moreover, the Bureau found substantial differences between the virtual collocation overhead loadings and those applied to comparable services.[27]

11. In the *Virtual Collocation Tariff Suspension Order*, the Bureau determined that the LECs had not attempted to show that the differences in the overhead loadings were due to differences in overhead costs incurred by the services.[28] Based on the record, the Bureau concluded that the LECs were strategically assigning high overhead loadings to deter efficient entry by interconnectors into the interstate access service market. The Bureau found that LECs tended to assign low overheads in markets where they faced actual or potential competition from interconnectors, and high overheads where they did not. The Bureau further determined that it appeared that this Commission's policy of facilitating efficient competitive entry into the interstate access service market would be frustrated by the practice of assigning high overheads to essential LEC facilities upon which interconnectors rely to

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[25] *See* Ameritech Operating Companies, *et. al.*, CC Docket No. 94-67, Order, 9 FCC Rcd 5230 (Com. Car. Bur. 1994).

[26] *Virtual Collocation Tariff Suspension Order* at para. 3. The Bureau also consolidated its investigations of the interim and permanent tariffs, noting that an upcoming order would designate specific issues for investigation relating to both sets of tariffs. *Id.*

[27] *Id.*

[28] *Id.* at para. 21.

provide competitive services, while assigning low overheads to the services against which interconnectors are trying to compete. The Bureau, therefore, found that absent justification, this practice is unreasonable.[29]

12. To facilitate efficient competitive entry into the interstate access service market, the Bureau imposed an interim adjustment pending further investigation of the LECs' overhead loadings. Pursuant to its authority under Section 204(a) of the Act, the Bureau partially suspended for a five-month period that part of the LECs' proposed overhead loadings that exceeded, without adequate justification, the lowest overhead loadings assigned to the LECs' comparable DS1 and DS3 services. The Bureau noted that an "average overhead loading" standard would not preclude LECs from engaging in anticompetitive behavior.[30]

13. The Bureau adjusted the LECs' rates so that the rate for each rate element dedicated to DS1-level expanded interconnection services would reflect the lowest overhead loadings assigned to the LECs' comparable DS1 services; the rate for each rate element dedicated to DS3-level expanded interconnection services would reflect the lowest overhead loadings assigned to the LECs' comparable DS3 services; and the rate for each rate element that could potentially be used with both DS1- and DS3-level expanded interconnection services would reflect the lowest overhead loadings assigned to any comparable service.[31] Finally, the Bureau stated that although it was not partially suspending some LECs' rates because their loadings appeared to comport with the Commission's overhead loading standard, it would examine all of the LECs' overhead loadings during its investigation.[32]

14. The Bureau also concluded that even after its partial disallowance of Bell Atlantic's proposed overhead loadings, the total charge for Bell Atlantic's DS1 virtual collocation service appeared excessive due to its maintenance-related expenses. Based on a comparison of the maintenance-related expense Bell Atlantic reported for its DS1 virtual collocation service with the maintenance-related expense Bell Atlantic attributed to its comparable DS1 electrical channel termination service, the Bureau reduced Bell Atlantic's

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[29] *Id.* at para. 22.

[30] *Id.* at para. 23. The Bureau explained that if LECs used an average overhead loading for services provided to interconnectors and below-average loadings for LEC services with which interconnectors compete, the effect would be to hamper the ability of interconnectors to compete effectively. *Id.*

[31] *Id.* at para. 25.

[32] *Id.* at paras. 21-23.

recovery of total maintenance expense to the level of its maintenance expense for a comparable DS1 electrical channel termination service.[33]

15. In the *Phase I Designation Order,* the Bureau provided the parties with an opportunity to comment on the interim adjustment imposed in the *Virtual Collocation Tariff Suspension Order*. For example, the Bureau asked the LECs to discuss the Bureau's definition of "comparable services." The Bureau also invited LECs to explain in their direct cases how the public interest goal of promoting efficient competition in interstate access service markets would be advanced if LECs use average overhead loadings for virtual collocation services provided to competitors and below-average loadings for their own customers.[34]

16. In addition, the Bureau required LECs to provide certain direct cost data that they had failed to submit in response to the *TRP Order*.[35] The Bureau also directed Bell Atlantic to provide justification for its maintenance-related charges.[36] Finally, the Bureau noted that it would designate additional issues for investigation and establish a separate pleading cycle for discussion of those issues in a subsequent designation order in Phase II of this docket.[37]

17. Pursuant to the *Phase I Designation Order*, all Tier 1 LECs subject to this Order filed direct cases on March 21, 1995. Three LECs -- Ameritech, CBT, and SWB -- requested confidential treatment of their disaggregated direct cost information.[38] In addition, Bell Atlantic did not respond in its direct case to the designated issue regarding its maintenance-related charges. Bell Atlantic claims that it is currently conducting a new cost study that may result in significantly lower maintenance costs. Bell Atlantic states that on June 1, 1995, it will file a revised tariff based on this study. In addition, Bell Atlantic states that until the Commission concludes its review of the revised tariff, it will "voluntarily accept, beyond the maximum five-month suspension period, a continuation of the existing

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[33] *Id.* at para. 37.

[34] *Phase I Designation Order* at para. 19.

[35] *Id.* at paras. 16-17.

[36] *Id.* at paras. 29-36.

[37] *Id.* at para. 2.

[38] *See* Letter from Michael S. Pabian, Ameritech (March 21, 1995); Letter from Alfred J. Titus, Jr., CBT (March 21, 1995); Letter from Thomas A. Pajda, SWB (March 21, 1995). On April 14, 1995, MFS filed FOIA requests to obtain cost support data filed with the direct cases of SWB and CBT.

virtual collocation tariff that resulted from the Commission's partial suspension of the filed tariff."[39]

18. Seven parties filed oppositions to the direct cases on April 4, 1995, and all LECs filed rebuttals on April 11, 1995. The parties filing oppositions, and the abbreviated names of those parties, are included in Appendix B to this Order.

III. THE BUREAU'S INTERIM OVERHEAD ADJUSTMENT

A. Overview

19. In the *Virtual Collocation Order,* we established a mandatory virtual collocation policy in order to preserve the substantial public interest benefits of expanded interconnection following the Court of Appeals' decision in *Bell Atlantic v. F.C.C.*[40] As we explained in the *Virtual Collocation Order*, our earlier decisions mandating expanded interconnection were fundamental to opening the interstate special access and switched transport markets to greater competition.[41] We observed that expanded interconnection will promote increased competition in interstate access service markets, and will benefit consumers through increased efficiency, broader access to services, reduced rates, and the more rapid deployment of new technologies.[42] In the *Virtual Collocation Tariff Suspension Order*, the Bureau took action to encourage efficient entry by interconnectors into the interstate access service market.

20. In the *Phase I Designation Order*, the Bureau provided the LECs with another opportunity to justify the overhead loadings assigned to their virtual collocation services.

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[39] Bell Atlantic Direct Case at 2. In its opposition, MFS demands that Bell Atlantic immediately provide justification for its original maintenance-related charges. MFS Opposition at 4-5. MFS also asks the Commission to impose sanctions on Bell Atlantic for failure to provide these data. *Id.* at 5. On April 11, 1995, Bell Atlantic filed the requested justification as an attachment to its rebuttal. Since the parties to this proceeding have not had an opportunity to comment on Bell Atlantic's justification of its maintenance-related costs, we will address this issue in a subsequent order in this docket. We note that Bell Atlantic's commitment to keeping rates at their partially suspended levels beyond the five-month suspension period, subject to an accounting order, will ensure that ratepayers are adequately protected during the interim period until issuance of our subsequent order.

[40] *Bell Atlantic Telephone Companies v. F.C.C.*, 24 F.3d 1441 (D.C. Cir. 1994) (*Bell Atlantic v. F.C.C.*) (vacating in part this Commission's expanded interconnection orders mandating expanded interconnection through physical collocation).

[41] *Virtual Collocation Order*, 9 FCC Rcd at 5155. We noted that our simultaneous grant of increased pricing flexibility to the LECs enables those companies to compete more vigorously as well, while assuring that we retain necessary controls on dominant access providers. *Id.*

[42] *Id.* at 5159.

Nevertheless, as discussed below, the LECs have again failed to justify adequately the substantial differences between their loadings for virtual collocation services and those applied to comparable services.

B. Procedural Issues

1. Pleadings

21. **Direct Case.** SWB maintains that there was no notice and comment prior to adoption of the *Virtual Collocation Order*, and therefore asserts that the issue of the appropriate level of overhead loadings for virtual collocation was not debated properly. Thus, SWB asserts, it was improper for the Bureau to implement the overhead loading standard set forth in that Order.[43] Alternatively, SWB contends that even if the Commission's overhead loading standard was adopted in an appropriate manner, the Bureau lacked authority to implement this standard because the Commission did not specifically delegate authority to the Bureau to do so.[44]

22. **Oppositions.** Commenters argue that the Bureau's approach to evaluating the LECs' virtual collocation overhead loadings was fair and reasonable, and urge the Commission to affirm the Bureau's findings.[45] Moreover, commenters contend that many LECs raise untimely challenges to the overhead loading standard adopted in the Commission's *Virtual Collocation Order*.[46] MCI observes that the Bureau acted within its authority and consistent with Commission policy when it ordered LECs to apply overhead loadings that are equal to the lowest overhead loadings assigned to other DS1 and DS3 customers. MCI observes that the *Phase I Designation Order* provided LECs with another opportunity to support their overhead loadings.[47]

23. **Rebuttal.** Bell Atlantic argues that the Commission cannot impose a final tariff prescription based on the Bureau's interim overhead adjustment without notice and comment under the Administrative Procedure Act.[48]

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[43] SWB Direct Case at 3.

[44] *Id.* at 3 n.8.

[45] Teleport Opposition at 4; MCI Opposition at 2; Fibernet Opposition at 5-6; MFS Opposition at 6.

[46] *See, e.g.*, Time Warner Opposition at 10-11. MFS and MCI object to SWB's contention that the *Virtual Collocation Order* was not preceded by adequate notice and opportunity for comment. MCI Opposition at 4-5; MFS Opposition at 8.

[47] MCI Opposition at 10 (*citing Virtual Collocation Tariff Suspension Order* at para. 25).

[48] Bell Atlantic Rebuttal at 2.

2. Discussion

24. As an initial matter, we need not consider SWB's collateral challenge to the procedure employed in adopting the *Virtual Collocation Order*. Challenges to the actions taken in that Order must be brought in the rulemaking proceeding itself.[49]

25. In any event, we disagree with SWB's argument that the Bureau lacked authority to implement our overhead loading standard by establishing, on an interim basis pending further investigation, a just and reasonable level of overhead loadings. The *Virtual Collocation Order* specifically stated that LECs have the burden of demonstrating that their connection charges meet our overhead loading standard, and are otherwise just, reasonable, and not unreasonably discriminatory.[50] We find that it was within the Bureau's authority to assess the LECs' compliance with our overhead loading standard, based on its extensive analysis of the cost and rate data submitted with the virtual collocation tariffs, and to establish the level of overhead loadings that is just and reasonable. The Bureau is typically charged with applying administrative standards adopted in rulemaking proceedings to specific circumstances presented by carrier tariff filings.[51] We reject SWB's unsupported assertion that we were required to delegate explicitly to the Bureau authority to implement our overhead loading standard.

26. Finally, contrary to Bell Atlantic's assertion, the *Phase I Designation Order* afforded parties that disagreed with the Bureau's action ample notice and opportunity to comment on the reasonableness of the Bureau's application of our overhead loading standard. The *Phase I Designation Order* provided LECs with an opportunity to address all aspects of the Bureau's determination that the LECs had failed to justify their proposals to recover a greater share of overhead loadings in their charges for virtual collocation services than they recover in charges for their comparable DS1 and DS3 services. This Commission now has

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[49] *Cf. JEM Broadcasting v. F.C.C.*, 22 F.3d 320 (D.C. Cir. 1994) (dismissing as untimely a collateral challenge to procedural genesis of rules). We note that SWB's petition for review of the *Virtual Collocation Order* is pending before the D.C. Circuit in *Pacific Bell et. al. v. F.C.C.*, D.C. Circuit No. 94-1547, filed Aug. 10, 1994. Moreover, our decision in the *Virtual Collocation Order* was based on consideration of the entire extensive record already assembled in the expanded interconnection proceeding, including that compiled in response to petitions for reconsideration of previous expanded interconnection orders. Our decision to reaffirm the overhead loading standard adopted in earlier orders was based on a sizable record that reflected lengthy debate concerning the appropriate level of overhead loadings for virtual collocation. *Virtual Collocation Order*, 9 FCC Rcd at 5156, 5189.

[50] *Virtual Collocation Order*, 9 FCC Rcd at 5189.

[51] *See* Section 0.91 of the Commission's Rules, 47 C.F.R. § 0.91 (authorizing the Common Carrier Bureau to make determinations regarding the lawfulness of tariffs).

before it an extensive record that provides substantial evidence to support a prescription regarding the maximum permissible overhead loadings for virtual collocation services.

C. Identification of Comparable Services

1. Background

27. In the *Phase I Designation Order*, the Bureau asked LECs to address various aspects of its determination that comparable services include all point-to-point DS1 and DS3 special access and switched transport services, offered in the form of channel termination services sold with and without interoffice mileage.[52] The Bureau directed LECs to identify any services they do not consider comparable to virtual collocation services in terms of overhead loading assignment. The Bureau required SWB, in particular, to explain why SWB characterized its comparable DS1 and DS3 services that provide channel termination without interoffice mileage as "rate elements," rather than as services.[53] The Bureau also required LECs to submit current data detailing the percentage of DS1 and DS3 channel termination services that are sold without interoffice mileage.[54]

28. In addition, the Bureau asked LECs to comment on whether there are additional services that should be considered comparable services.[55] In particular, the Bureau directed LECs to address whether a promotional offering should be considered a comparable service.[56]

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[52] *Phase I Designation Order* at paras. 14-17.

[53] *Id.* at para. 17(e).

[54] *Id.* at para. 17(f). Further, in order to examine the LECs' virtual collocation rate elements that may be used with either DS1 or DS3 level cross-connects, the Bureau required LECs to list the virtual collocation rate elements they treated as nondedicated in their tariff revisions filed pursuant to the *Virtual Collocation Tariff Suspension Order*. *Id.* at paras. 20-22. The LECs complied with the Bureau's request.

[55] *Id.* at para. 17(a). The Bureau noted that there may be other services that employ the same basic types of DS1 and DS3 level equipment in the LECs' central offices, and for which this equipment constitutes a substantial, if not predominant share of the total cost of the service. *Id.* at n.39.

[56] *Id.* at para. 17(a). The Bureau stated that LECs addressing the issue of promotional services should explain the criteria used to classify such services as promotional. The Bureau further stated that if a LEC concludes that a promotional service should not be considered a comparable service under some or all circumstances, it should specify the type of promotion that should be excluded and the reasons for such exclusion. *Id.* at n.40.

2. Pleadings

29. **Direct Cases.** Several LECs agree with the Bureau's determination that all DS1 and DS3 virtual collocation services are comparable to the point-to-point DS1 and DS3 services delineated in the *TRP Order*.[57] For example, United maintains that it does not offer any services other than DS1 and DS3 "channel terminations/entrance facilities" that might be comparable to virtual collocation services.[58] Most LECs, however, object to the Bureau's use of point-to-point DS1 and DS3 services as comparable services.

30. A few LECs contend that none of their DS1 and DS3 access services should be regarded as comparable to DS1 and DS3 virtual collocation services. US West argues that from a provisioning perspective, the standard DS1 and DS3 services are not comparable to virtual collocation services.[59] US West explains that DS1 and DS3 services require fiber termination panels, fiber optic terminals, digital cross-connect panels, fiber, repeaters, and monitoring, while virtual collocation services require connecting cables, jumpers, regenerators, and digital cross-connect panels.[60] US West further avers that it does not consider its Self Healing Alternate Route Protection (SHARP) and interoffice mileage offering to be comparable to virtual collocation services.[61] BellSouth argues that it offers no services comparable to those services provided in a virtual collocation arrangement. Rather, BellSouth asserts that the only meaningful comparison is between LEC end-to-end services and interconnector-provided transport services, because the interconnectors assign their own overhead loadings to their services.[62]

31. A number of LECs, such as SWB, object to certain aspects of the Bureau's definition of comparable services, and argue that the Bureau should have characterized the scope of comparable services in a different manner.[63] According to SWB, the Bureau should

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[57] *Id.* at paras. 17-18.

[58] United Direct Case at 1. In addition, Bell Atlantic and GTE state that the services listed in the *TRP Order* are comparable to their DS1 and DS3 virtual collocation services. Bell Atlantic Direct Case at 6; GTE Direct Case at 2.

[59] US West Direct Case at 4.

[60] *Id.* at 7.

[61] *Id.* at 4.

[62] BellSouth Direct Case at 3.

[63] SWB Direct Case at 3 n.8.

not have identified a channel termination as a point-to-point service.[64] SWB contends that a channel termination is a rate element which, together with other rate elements, comprises a point-to-point service.[65] SWB asserts that if individual rate elements are to be considered services, the Commission should establish a standard that reflects the group of rate elements that are most technically equivalent to virtual collocation.[66] SWB acknowledges that 41 percent of its DS1 channel terminations are purchased without interoffice mileage, but insists that most channel terminations are obtained in conjunction with other rate elements.[67]

32. CBT claims that its discounted volume and term services should not be considered comparable to its virtual collocation service. CBT states that even though the investment components of the services may be similar, CBT offers virtual collocation service only on a month-to-month basis.[68] CBT observes that the annual charge factors, such as depreciation, cost of money, income taxes, maintenance expense, administrative expense, marketing expense and other taxes, which are applied to the investment components, are lower for a long-term arrangement.[69] Ameritech contends that the category of services considered comparable to virtual collocation services should be limited to those end-to-end LEC services that compete with interconnector-provided services dependent on the LEC's virtual collocation services.[70] Finally, most LECs object to including promotional services within the scope of comparable services.[71]

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[64] *See* SWB Direct Case at 5, App. 5 at 2-3. *But see* Bell Atlantic Direct Case at 13 (noting that collocation services and channel termination services are comparable, but not equivalent, services).

[65] SWB Direct Case, App. 5 at 2-3. SWB alleges that "[t]here is nothing in the historical record that implies a service with channel mileage is a different service than a service without channel mileage." *Id.* at 3.

[66] *Id.* at 5. In particular, SWB alleges that the overheads on its multiple DS3 rate elements are more comparable than the rate elements selected by the Bureau. *Id.* at 3 n.2.

[67] SWB Direct Case, App. 6 at 1. All of the LECs state that they provide a substantial percentage of channel terminations without interoffice mileage. Ameritech Direct Case at 4-5; Bell Atlantic Direct Case at 6-7; BellSouth Direct Case at 2; CBT Direct Case, App. A at 2; United Direct Case at 6; US West Direct Case at 8.

[68] CBT Direct Case at App. A, p. 1.

[69] *Id.* at 2.

[70] Ameritech Direct Case at 1-2.

[71] *See, e.g.*, Bell Atlantic Direct Case at 1; United Direct Case at 2. GTE, however, declares that promotional services may be considered comparable to virtual collocation services. GTE Direct Case at 2. Besides promotional offerings, none of the LECs proffered examples of additional services that should be considered comparable services. Ameritech Direct Case at 1-2; Bell Atlantic Direct

33. **Oppositions.** Commenters insist that the Bureau properly defined the scope of services that are comparable to DS1 and DS3 virtual collocation services.[72] Fibernet disagrees with SWB's attempt to eliminate channel terminations from the scope of comparable services by drawing a distinction between rate elements and services. According to Fibernet, the bundling of rate elements into services is purely an artificial construct created by the LECs through the tariffing process.[73] Fibernet asserts that the willingness of the LECs to permit end users to purchase a channel termination on an unbundled, *i.e.*, stand-alone basis, determines whether a channel termination is considered a service.[74]

34. ALTS, ELI, McLeod, and MFS contend that US West has failed to provide data regarding its SHARP service, despite the Bureau's requirement that LECs file cost data for self-healing network services.[75] Further, Time Warner asserts that BellSouth's argument, that the only meaningful comparison is between LEC services and interconnector services because the interconnectors will assign their own overhead loadings to their services, ignores the fact that the overheads that interconnectors may apply are irrelevant to the reasonableness of the LECs' overhead loadings for virtual collocation rate elements.[76]

35. Time Warner claims that discounted offerings should be included within the scope of comparable services because interconnectors compete against these services, even if virtual collocation is only offered on a month-to-month basis. Moreover, Time Warner maintains, LECs have the discretion to offer discounts for virtual collocation services. Time Warner claims that if overhead loadings assigned to month-to-month virtual collocation offerings are not considered comparable to those assigned to discounted DS1/DS3 offerings, LECs could prevent interconnectors from offering their customers competing discounted

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Case at 1; CBT Direct Case, App. A at 1; GTE Direct Case at 2; United Direct Case at 1-2.

[72] *See, e.g.*, Teleport Opposition at 4. Time Warner observes that virtual collocation services use essentially the same facilities as the LECs' point-to-point DS1 and DS3 services, although virtual collocation arrangements are more limited. Time Warner Opposition at 14; *accord* Fibernet Opposition at 16-17 (asserting that virtual collocation arrangements require less fiber and electronics than any of SWB's tariffed services).

[73] Fibernet Opposition at 15.

[74] *Id.* at 15-16.

[75] ALTS Opposition at 16; ELI Opposition at 4-5; McLeod Opposition at 2-4; MFS Opposition at 16-17.

[76] Time Warner Opposition at 24. Time Warner notes that the Bureau rejected SWB's similar claim that LEC overhead loadings would not deter competitive entry, even if interconnectors' profit levels are reduced. *Id.* (*citing Virtual Collocation Tariff Suspension Order* at para. 22 n.58).

offerings.[77] Finally, MFS, Fibernet and Time Warner contend that promotional services should be considered comparable services.[78]

36. **Rebuttals.** The LECs essentially reiterate the objections set forth in their direct cases.[79] SWB argues that the presence of interoffice mileage is "transparent to the service requested by the customer," and that it is inappropriate to exclude channel mileage from the determination of overhead assigned to a comparable service.[80] Although US West again asserts that it does not consider SHARP service to be comparable to virtual collocation service,[81] it maintains that it submitted information regarding SHARP service with its September 1994 virtual collocation filing.[82]

37. US West also contends that it is inappropriate to assign to month-to-month virtual collocation services those overhead loadings that are applicable to comparable term discounted agreements for access services.[83] Finally, US West submits that it is not opposed to allowing a promotional offering to apply to virtual collocation services when failure to extend that promotion would be perceived as unfair or anticompetitive.[84] US West asserts, however, that promotional offerings should be addressed via the tariff process, where an

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[77] Time Warner Opposition at 16.

[78] Fibernet Opposition at 17-19; Time Warner Opposition at 15-17 (asserting that such services are another means for LECs to compete with interconnector-provided services that are dependent on the bottleneck virtual collocation services); MFS Opposition at 19-22 (arguing that LECs should extend promotional nonrecurring charge waivers to interconnectors).

[79] *See, e.g.*, BellSouth Rebuttal at 2.

[80] SWB Rebuttal at 7-9. In its rebuttal, Bell Atlantic adopted SWB's argument that the Bureau should not have based its interim adjustments on overhead loadings for channel terminations without interoffice mileage. Bell Atlantic Rebuttal at 4-5.

[81] US West avers that unlike virtual collocation service, SHARP service is not provisioned as a month-to-month service and includes interoffice mileage. US West Rebuttal at 4. US West generally observes that virtual collocation services only connect the interconnector-designated equipment in the central office with a US West-provided access service within the same central office; they do not extend out to the customer's premises. By contrast, US West notes that DS1/DS3 services connect US West equipment in the central office with a customer's premises. *Id.* at Attachment A.

[82] *Id.* at 7.

[83] *Id.* at 10.

[84] *Id.* at 11 n.31. US West notes, however, that such a consideration is usually not relevant to a business decision to offer promotions at the retail level. *Id.*

interested interconnector can petition the proposed tariff, rather than through the establishment of a prescriptive rule.[85]

3. Discussion

38. **Overview.** The *Phase I Designation Order* directed LECs to discuss the Bureau's determination that DS1 and DS3 virtual collocation services are comparable to all point-to-point DS1 and DS3 special access and switched transport services, a category that includes channel termination services offered with and without interoffice mileage.[86] None of the LECs has presented convincing arguments that we should modify the Bureau's definition of comparable services.

39. **Bureau's Comparison to Point-to-Point Services.** As a general matter, the LECs' arguments demonstrate a basic misunderstanding of the goal of identifying comparable services. In both the *TRP Order* and the *Virtual Collocation Tariff Suspension Order*, the Bureau sought to identify services that it could use as a yardstick to evaluate the overhead loadings assigned to virtual collocation services. The Bureau selected point-to-point DS1 and DS3 services which, like virtual collocation services, are stand-alone services that provide a connection between the customer premise and another location (such as another customer premise or a LEC's central office). The Bureau noted that these point-to-point services use the same basic types of equipment in the LEC's central office as do virtual collocation services. Since point-to-point services are offered in two basic forms -- as services providing channel termination with and without interoffice mileage -- the Bureau included both of these forms within the scope of comparable services.[87] These comparable services did not, however, have to be identical to virtual collocation services in terms of their equipment and provisioning requirements.

40. Moreover, these comparable point-to-point services are services that face actual or potential competition from interconnectors seeking to compete in the interstate access service market. The Bureau reasoned that if the overhead loadings assigned to these comparable DS1 and DS3 services differed, without adequate justification, from the overhead loadings assigned to virtual collocation services, LECs could unreasonably discriminate against interconnectors. The Bureau was concerned, specifically, that by assigning low

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[85] *Id.* at 11-12. *Cf.* SWB Rebuttal at 13 (maintaining that inclusion of promotional offerings would prevent SWB from offering promotional rates for its DS1/DS3 services).

[86] For a more detailed discussion of point-to-point services, *see TRP Order*, 9 FCC Rcd at 5682-83; *Virtual Collocation Tariff Suspension Order* at paras. 17-18.

[87] *Virtual Collocation Tariff Suspension Order* at para. 18. The Bureau noted that because a channel termination facility connects the customer premise to the nearest central office, interoffice mileage is not needed unless the customer wishes to be connected to a different central office. *Id.* at n.50.

overheads to the point-to-point services with which interconnectors compete, and high overheads to the LEC facilities upon which interconnectors rely to provide competitive services, the interconnectors could be disadvantaged competitively.[88]

41. We agree with the Bureau's determination that point-to-point DS1 and DS3 services are comparable to virtual collocation services. We, therefore, find no merit in the LECs' arguments that DS1 and DS3 services should not be compared to virtual collocation services because these two types of services are "provisioned" differently and thus are not technically equivalent. Whether comparable DS1 and DS3 services require different equipment than virtual collocation services is relevant only to the direct costs of these services, not to whether these DS1 and DS3 services are comparable to virtual collocation services for purposes of an overhead loading comparison. Nor are provisioning differences relevant to whether comparable DS1 and DS3 services face actual or potential competition from interconnectors seeking to compete in the interstate access service market.[89]

42. We also disagree with BellSouth's assertion that the only meaningful comparison of services is between the LECs' end-to-end services and interconnector-provided transport services. This proceeding is an investigation of whether the rates charged to interconnectors for virtual collocation services are just and reasonable. We are not, however, investigating the interconnectors' direct costs or the rates that interconnectors assess their own customers. Such a comparison would not be useful in determining whether LECs are assigning low overheads to the point-to-point services with which interconnectors compete, and high overheads to the LEC facilities upon which interconnectors rely to provide competitive services. Moreover, as stated above, this practice could prevent interconnectors from competing in the interstate access service market.

43. **Specific Point-to-Point Services.** SWB agrees with the Bureau's conclusion that point-to-point DS1 and DS3 services are comparable to virtual collocation services, but objects to the Bureau's determination that channel termination services offered without interoffice mileage fit within the category of comparable point-to-point DS1 and DS3 services.[90] SWB's objection ignores the fact that channel termination services sold without interoffice mileage are services with which interconnectors compete in the interstate access

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[88] *Id.* at para. 22.

[89] Further, contrary to commenters' assertions, US West did submit information regarding its SHARP service with its September 1994 virtual collocation filing. The Bureau properly considered this SHARP service data in its analysis of US West's proposed overhead loadings for virtual collocation services. In the *TRP Order*, the Bureau specifically included basic services offering specialized features such as self-healing networks within the rubric of comparable DS1 and DS3 services. *TRP Order*, 9 FCC Rcd at 5684.

[90] *See* SWB Direct Case at 2, 4.

service market. All of the LECs, including SWB, concede that a substantial portion of channel termination services are sold without interoffice mileage.[91]

44. Further, contrary to SWB's claim, the Bureau properly compared the overhead loadings assigned to virtual collocation services with those assigned to channel termination services. The net effect of our expanded interconnection policy is to permit interconnectors to pay a "connection charge" in lieu of a channel termination charge.[92] Prior to the advent of expanded interconnection, the LECs' interstate special access tariffs required interconnectors to pay two channel termination charges, even when interconnectors substituted their own facilities for most of the LECs' transmission segments in order to provide the "premise-to-central office" or "central office-to-interexchange carrier point-of-presence" segments of a special access line.[93] As a result, interconnectors were unable to offer service at economically competitive prices. When we adopted new rate structure requirements to accommodate expanded interconnection through virtual collocation, we required LECs to develop expanded interconnection "connection charges" to replace one of the channel termination charges in special access arrangements.[94] We, therefore, find unpersuasive SWB's assertion that channel termination service is not comparable to the very service that interconnectors may use to replace it.

45. Likewise, we agree with the Bureau's finding that discounted volume and term DS1 and DS3 services should be included within the scope of comparable services because

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[91] *See* note 67, *supra*.

[92] The LECs' special access tariffs generally impose two types of recurring charges: (1) a flat-rate, non-distance-sensitive channel termination charge, which applies to the connections between the customer premise and the central office, as well as to the connections between the central office and the interexchange carrier point of presence or other customer-designated end point; and (2) a distance-sensitive channel mileage charge that applies to the special access connection between LEC central offices, if one is required. *See* Expanded Interconnection with Local Telephone Facilities, Notice of Proposed Rulemaking and Notice of Inquiry, 6 FCC Rcd 3259, 3265 (1991) (*Notice of Inquiry*); *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7373-74. We noted, however, that the Part 69 access charge rate structure rules did not specify a particular rate structure for the provision of special access services. *Notice of Inquiry*, 6 FCC Rcd at 3264.

[93] Rather, a customer had the choice of either using LEC facilities for the entire special access connection or bypassing the LEC entirely through third party facilities that connected the customer location directly to the interexchange carrier. *Notice of Inquiry*, 6 FCC Rcd at 3260. *See also Special Access Expanded Interconnection Order*, 7 FCC Rcd 7374 (1992).

[94] *See Notice of Inquiry*, 6 FCC Rcd at 3265; *see also Virtual Collocation Order*, 9 FCC Rcd at 5159 (explaining that this Commission's expanded interconnection policy allows a party to purchase only those LEC transmission and distribution links that the party deems necessary).

they are services with which interconnectors compete in the interstate access service market.[95] The volume and term discounted services are the LEC services facing actual or potential competition from interconnectors. LECs may offer these services if they meet certain threshold requirements demonstrating that they currently face competition from interconnectors.[96] We, therefore, reject CBT's assertion that the overhead loadings assigned to discounted services should not be compared to the overhead loadings assigned to CBT's virtual collocation services. Moreover, we note that LECs are free to offer volume and term discounts to their virtual collocation customers.

46. Finally, none of the parties has suggested any particular promotional services that should be considered comparable services that face actual or potential competition from interconnectors. Accordingly, we conclude that the record does not contain sufficient information at this time for us to determine whether promotional offerings should be included within the scope of comparable services. We, therefore, exclude promotional offerings from our analysis of the overhead loadings assigned to the LECs' virtual collocation rates at this time.

D. The Bureau's Overhead Loading Analysis

1. Background

47. In addition to seeking comment on the Bureau's characterization of the scope of comparable services, the *Phase I Designation Order* provided LECs with a forum to address the Bureau's comparison of the overhead loadings assigned to these comparable services with the loadings assigned to virtual collocation services. In the *Phase I Designation Order*, the Bureau noted that most LECs continue to maintain that the overhead loadings assigned to their virtual collocation services are below or comparable to the loadings assigned to their comparable services. Nevertheless, the Bureau stated, it appeared that most of these

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[95] In our *Virtual Collocation Order*, we stated that LEC flexibility to offer volume and term discounts for switched transport services should be linked to a demonstration that the LEC's expanded interconnection offering presents a viable competitive opportunity. *Virtual Collocation Order*, 9 FCC Rcd at 5204.

[96] In the *Switched Transport Expanded Interconnection Order* and, more recently, in the *Virtual Collocation Order*, we permitted LECs to implement volume and term discounts for switched transport rates in a study area when one of the following two conditions has been met: (1) 100 DS1-equivalent switched cross-connects are operational in the Zone 1 offices in the study area; or (2) an average of 25 DS1-equivalent switched cross-connects per Zone 1 office are operational. In study areas with no Zone 1 offices, volume and term discounts may be implemented once five DS1-equivalent switched cross-connects are operational in the study area. Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374, 7435 (1993) *(Switched Transport Expanded Interconnection Order)*; *Virtual Collocation Order*, 9 FCC Rcd at 5202-04. *See also Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7437-38 (discussing LEC pricing flexibility for special access services).

LECs developed their overhead loadings based on an average of the overhead loadings assigned to all of their comparable DS1 and DS3 services.[97]

48. To assist its evaluation of the LECs' approaches, the Bureau asked them to explain how the public interest goal of promoting efficient competition is advanced if LECs use average overhead loadings for virtual collocation services provided to competitors and below-average loadings for services provided to their own end users.[98]

2. Pleadings

49. **Direct Cases.** A few LECs contend that even if the Bureau properly defined the scope of comparable services for purposes of its overhead loading comparison, its comparison of the overhead loadings assigned to comparable services with those assigned to virtual collocation services was flawed. BellSouth maintains that the Bureau wrongly assumed that virtual collocation services should reflect uniform overhead loadings, absent justification. BellSouth argues that it is not unreasonable for overheads applied to LEC services and those applied to virtual collocation services to vary.[99] US West maintains that because its method of establishing overheads for virtual collocation is the same as that used to establish overheads for services subject to price cap regulation, the overhead loadings assigned to its virtual collocation services cannot be contrary to the public interest.[100] GTE contends that it is unfair to compare newly developed virtual collocation rates with DS1 and DS3 rates that have been adjusted under price cap regulation.[101]

50. Most of the LECs support the Bureau's conclusion that variations between overhead loadings assigned to virtual collocation services and comparable DS1 and DS3 services are based on market conditions. For example, Ameritech maintains that the process of assigning overhead loadings to virtual collocation services is unrelated to the process by which DS1 and DS3 services are priced.[102] BellSouth, however, objects to the Bureau's finding that overhead factors are assigned according to the characteristics of specific market

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[97] *Phase I Designation Order* at para. 18.

[98] *Id.* at para. 19.

[99] BellSouth Direct Case at 4.

[100] US West Direct Case at 9.

[101] GTE Direct Case at 2-5 (contending that the overhead loadings for virtual collocation rate elements do not differ from those assigned to comparable services).

[102] Ameritech Direct Case at 6; *see also* United Direct Case at 7.

segments.[103] According to BellSouth, there is no variation across markets in the overhead loading assigned to a specific access service because BellSouth cannot offer geographically deaveraged rates.[104]

51. Several LECs also challenge the Bureau's conclusion that in order to prevent unreasonable discrimination against interconnectors seeking to compete in the interstate access service market, LECs should assign to virtual collocation services the lowest overhead loadings assigned to their comparable DS1 and DS3 services.[105] SWB argues that an average overhead loading standard would best meet the public interest goal of fostering efficient competition.[106] SWB submits that it used a simple average of all DS1 and DS3 recurring rate elements for all of its comparable DS1 and DS3 services.[107]

52. According to Ameritech, it is unnecessary to require that the overhead loading on a competitive service be no less than the overhead loading assigned to virtual collocation services in order to preclude a price squeeze, especially if the direct cost of the competitive service exceeds the direct cost of the virtual collocation services.[108] Ameritech claims that an average overhead loading will protect interconnectors from a price squeeze, as long as the overhead loadings on the rates for comparable services are sufficient to cover the dollar amount of overheads assigned to an equivalent volume of interconnection services.[109]

53. **Oppositions.** Time Warner, MCI, and Fibernet assert that the LECs have again failed to demonstrate that the wide variations in overhead loadings are due to actual differences in the overhead costs incurred by the different services.[110] Time Warner argues that differences in loadings due to price cap regulation of special access and switched transport services are not relevant to the Bureau's comparison of the overhead loadings currently applied to the comparable DS1 and DS3 services with the proposed overhead

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[103] BellSouth Direct Case at 4. BellSouth notes that all of its DS1 and DS3 services "do not reflect the same loading ... ; nevertheless, all such offerings face competition from [interconnectors]." *Id.*

[104] *Id.* (*citing Virtual Collocation Tariff Suspension Order* at para. 21). *See also* Bell Atlantic Direct Case at 9.

[105] *See Virtual Collocation Tariff Suspension Order* at para. 24.

[106] SWB Direct Case at 4-5.

[107] *Id.* at 2.

[108] Ameritech Direct Case at 7.

[109] *Id.* at 8.

[110] Time Warner Opposition at 4; MCI Opposition at 1; Fibernet Opposition at 8.

loadings for virtual collocation services. Moreover, Time Warner asserts, GTE fails to acknowledge that higher overhead loadings for virtual collocation services mean that interconnectors function at a competitive disadvantage.[111]

54. MCI asserts that because interconnectors will have to compete against the lowest rates charged by the LEC, their costs for essential bottleneck facilities should be equal to those that the LEC charges itself, *i.e.*, the lowest overhead loading assigned to other DS1 and DS3 services.[112] Fibernet maintains that the Bureau's approach will facilitate efficient entry into the marketplace,[113] and ultimately result in increased freedom of choice for interstate access customers.[114]

55. Time Warner and MCI argue that no LEC has attempted to explain how the use of an average overhead loading standard would promote competition.[115] Fibernet asserts that SWB's use of a simple average will prevent the benefits of expanded interconnection from extending beyond the largest end users to include small businesses.[116] Fibernet also challenges SWB's attempt to redefine the concept of "most valued customer." According to Fibernet, the Bureau's policy of preventing anticompetitive pricing properly focused on the relative levels of overhead loadings, not the prices paid by various special access customers on a "per DS3-equivalent" basis.[117]

56. Finally, Teleport contends that since the LECs have been given considerable pricing flexibility as a result of the Commission's zone density pricing decisions, the use of averaged loadings would leave competitors facing excessive costs in markets where competition is most likely.[118] Teleport maintains that the Bureau's overhead adjustments serve to limit the ability of LECs to engage in anticompetitive conduct.[119]

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[111] Time Warner Opposition at 12.

[112] MCI Opposition at 12.

[113] Fibernet Opposition at 5-6.

[114] *Id.* at 11.

[115] Time Warner Opposition at 11, 14 (specifically targeting SWB's argument); MCI Opposition at 12-13.

[116] Fibernet Opposition at 13.

[117] *Id.* at 13 n.25.

[118] Teleport Opposition at 5.

[119] *Id.* at 3.

57. **Rebuttals.** SWB alleges that commenters' fear of a price squeeze are unfounded. SWB claims that LECs would try to avoid such anticompetitive behavior, and that modern economic literature indicates that neither predatory pricing nor anticompetitive price squeezes are common in American industry.[120] BellSouth agrees with SWB that a price squeeze is unlikely to occur. According to BellSouth, the virtual collocation cross-connect element[121] is too small a cost component to have a significant impact on an interconnector's total service provisioning costs.[122] Ameritech and SWB contend that a price squeeze cannot occur if the total dollar amount of overhead contribution from a virtual collocation service does not exceed the dollar amount of overhead contribution from the comparable retail services.[123]

58. SWB further responds that unless it is permitted to use average overhead loadings for virtual collocation services, interconnectors will have a marketplace advantage.[124] According to SWB, the Bureau's overhead standard forces SWB to charge average overheads for access services provided to its own customers, while interconnectors pay below-average overheads on virtual collocation service.[125] In response to MCI's argument, SWB asserts that the use of an average overhead amount would include all the rates that the LEC charges itself, not only the lowest of these amounts.[126]

59. Finally, SWB and Bell Atlantic assert that the "most favored" customer may not be the customer paying the lowest overhead loading, because in some cases services with the lowest unit charge carry higher overhead loadings than services with higher unit costs.[127] For example, Bell Atlantic asserts that it provides interconnectors with month-to-month

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[120] SWB Rebuttal at 15.

[121] BellSouth maintains that apart from certain support functions (*e.g.*, electricity), the only service provided to the interconnectors in a virtual collocation arrangement is the DS1/DS3 cross-connect. BellSouth Rebuttal at 2.

[122] *Id.* at 4.

[123] Ameritech Rebuttal at 7; SWB Rebuttal at 14.

[124] *Id.* at 4-6.

[125] *Id.* at 12.

[126] *Id.* at 5 (quoting MCI Opposition at 12). *Accord* Bell Atlantic Rebuttal at 2 (favoring use of the range of overheads assigned to a "family" of comparable DS1/DS3 access services).

[127] SWB Rebuttal at 7; Bell Atlantic Rebuttal at 2-3.

virtual collocation rates that have lower overhead loadings than the comparable month-to-month access service charges.[128]

3. Discussion

60. **Overview.** In their direct cases, the LECs assert that even if the Bureau properly defined the scope of comparable services for purposes of its overhead loading comparison, the Bureau's methodology for comparing the overhead loadings assigned to comparable services with those assigned to virtual collocation services was inappropriate. As explained below, we find that none of the LECs has raised valid objections to the Bureau's overhead loading analysis. Rather, the LECs' arguments generally demonstrate a misunderstanding of our overhead loading standard and a failure to admit that the interconnector's dual role as competitor and customer of the LEC necessitates careful scrutiny of the overhead loadings assigned to interconnection services. We, therefore, conclude that the Bureau's overhead adjustment represents a reasonable approach to preventing unreasonable discrimination against interconnectors seeking to compete in the interstate access service market, without hampering the LECs' ability to compete effectively.

61. **LECs' Failure to Meet Overhead Loading Standard.** In the *Virtual Collocation Order*, we adopted a broad overhead loading standard. We stated that if a LEC chooses to use nonuniform overhead loadings, it may not recover a greater share of overheads in charges for virtual collocation services than it recovers in charges for comparable services, absent justification.[129] This standard does not imply, as BellSouth mistakenly claims, that LECs are required to use uniform overhead loadings for the comparable services. Rather, our standard requires that LECs justify variations in overhead loadings between their comparable DS1 and DS3 services and their virtual collocation services.

62. In the *Virtual Collocation Tariff Suspension Order*, the Bureau reviewed the LECs' tariff submissions and related pleadings and determined that although all LECs used nonuniform overhead loadings, none had attempted to show that the differences in the overhead loadings between services were due to the differences in overhead costs actually incurred by the two types of services.[130] Instead, the Bureau found that the LECs generally concede that the variation in overhead assignment is not due to actual cost differences among individual services, but rather to market conditions.[131] Due to the interconnectors' need for

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[128] *Id.* at 3.

[129] *Virtual Collocation Order*, 9 FCC Rcd at 5189.

[130] *Virtual Collocation Tariff Suspension Order* at para. 21.

[131] Most LECs tended to assign low overheads in markets where they faced actual or potential competition from interconnectors, and high overheads where they did not. *Id.* at para. 21.

the bottleneck LEC facilities, the Bureau concluded that the LECs' market-based justification for the levels of overhead loadings was not a reasonable basis for the differences between the overhead loadings on the comparable services and virtual collocation services.[132] The Bureau reasoned that the policy of facilitating efficient competitive entry into the interstate access service market would be frustrated by the LECs' practice of assigning high overheads to the facilities upon which interconnectors rely to provide competitive services, while assigning low overheads to the services against which interconnectors are trying to compete.[133]

63. None of the LECs has refuted the Bureau's finding that differences in overhead loadings primarily reflect the LECs' strategic assignment of overhead loadings to prevent efficient entry by their competitors into the interstate access service market. Indeed, BellSouth is the only LEC that challenges this finding. BellSouth claims that, because it cannot offer geographically deaveraged rates, there is no variation across markets in the loading assigned to a specific comparable service. We disagree. BellSouth may file a zone density tariff to offer DS1 and DS3 services on a geographically deaveraged basis as long as it complies with this Commission's requirements.

64. We also find no merit to US West's and GTE's argument that the Bureau erred in comparing the overhead loadings assigned to comparable services that have been subjected to price cap regulation with the overhead loadings assigned to newly developed virtual collocation services. This argument ignores the crucial issue of whether the LECs have provided adequate justification for assigning different (*i.e.*, higher) overhead loadings to virtual collocation services that enable interconnectors to compete with their comparable DS1 and DS3 services. The mere fact that virtual collocation services are currently excluded from price cap regulation does not establish a sound basis for assigning different overhead loadings to virtual collocation services.[134]

65. **Bureau's Application of Overhead Loading Standard.** In light of the potential for unreasonable discrimination against interconnectors due to the LECs' assignment of overhead loadings, the Bureau applied our standard for assessing overhead loadings assigned to virtual collocation rate elements in a manner that would facilitate efficient entry by interconnectors seeking to compete in the interstate access service market. Specifically,

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[132] *Id.* We note that our concern regarding the LECs' ability to establish overhead loadings for virtual collocation based on market conditions is due strictly to the unique circumstances of expanded interconnection: that the LECs control the bottleneck facilities that interconnectors need to enter the interstate access service market.

[133] *Id.* at para. 22. The Bureau noted that LECs are selling a productive input to firms against which they compete in downstream end user markets. *Id.*

[134] In the *Virtual Collocation Order*, we reaffirmed that expanded interconnection services covered by connection charges will be excluded from the LECs' price cap baskets indefinitely and are subject to non-streamlined Title II regulation. *Virtual Collocation Order*, 9 FCC Rcd at 5187.

the Bureau held that it is unreasonable, absent justification, for LECs to use high overheads to raise the prices of essential services needed as inputs by their competitors, while simultaneously using low overheads to reduce the prices of services sold in competition with those rivals.[135]

66. The Bureau partially suspended for a five-month period that part of the LECs' overhead loadings that exceeded, without adequate justification, the lowest overhead loadings assigned to the LECs' comparable DS1 and DS3 services.[136] The Bureau explained that its interim adjustments would extend to interconnectors the same treatment of overhead assignment that LECs give their most favored DS1 or DS3 customers.[137] The Bureau noted that an "average overhead loading" standard would not preclude LECs from engaging in anticompetitive behavior.[138]

67. Ameritech and SWB contend that all that is necessary to prevent unreasonable discrimination against interconnectors is to ensure that the total dollar amount of overheads included in the virtual collocation service does not exceed the dollar amount of overhead contribution from the services provided by the LEC with which the interconnector would compete.[139] These LECs assert that under the Bureau's overhead loading standard, a LEC is not permitted to recover overhead contributions from customers that may migrate to competitors' services, *i.e.*, the "opportunity costs," and that therefore, the Bureau's maximum permissible overhead loading percentages are too low.[140] We conclude that this contention lacks merit.

68. SWB's and Ameritech's argument appears to amount to a request that we permit LECs to assess a "contribution charge," or a rate compensating LECs for lost revenues due to migration of special access customers to competitors' services. In the *Special Access Expanded Interconnection Order*, we specifically rejected inclusion of a charge that would allow the LECs to recover a contribution amount equivalent to special

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[135] *Virtual Collocation Tariff Suspension Order* at para. 22.

[136] *Id.* at paras. 24-25.

[137] *Id.* at para. 27.

[138] *Id.* at para. 23. The Bureau explained that if LECs used an average overhead loading for services provided to interconnectors and below-average loadings for LEC services with which interconnectors compete, the effect would be to hamper the ability of interconnectors to compete effectively. *Id.*

[139] SWB Rebuttal at 14; Ameritech Rebuttal at 7.

[140] SWB Rebuttal at 14 n.22.

access revenues minus the incremental cost of providing the special access services.[141] We reasoned that such an approach would force interconnectors to bear a significant portion of LEC overheads and would tend to result in an unduly high contribution element, thus unreasonably discouraging the use of expanded interconnection.[142]

69. In the *Virtual Collocation Order*, we declined to modify for our new virtual collocation regime our rule regarding contribution charges for virtual collocation services.[143] We stated that if any LEC proposed a contribution charge for virtual collocation services, we would consider such proposal on its merits. We noted that, in theory, a contribution charge may be reasonable if targeted to recover specifically identified regulatory support mechanisms or non-cost based allocations embedded in LEC rates subject to competition.[144] To the extent that Ameritech and SWB are proposing a contribution charge for virtual collocation services, we conclude that these LECs have failed to demonstrate the existence of any such support flows.[145]

70. We also disagree with SWB's assertion that a LEC has no economic incentive to engage in anticompetitive behavior. According to SWB, lowering the prices of services with which the interconnector competes would reduce the LEC's contribution and profits.[146] Although this behavior could initially result in reduced LEC profits on DS1 and DS3 services, we are concerned that the long-term effect of such behavior would be to increase LEC profits by reducing competition. While predation may be infrequent, under certain market conditions it may be a profitable strategy.[147]

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[141] *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7436. We also rejected a proposal to set prices for expanded interconnection services to recover the LECs' opportunity costs associated with providing expanded interconnection (*i.e.*, a charge that ensures that the LEC do not lose revenues as a result of offering this service.) *Id.* at 7430.

[142] *Id.* at 7436; *see also Switched Transport Expanded Interconnection Order*, 8 FCC Rcd at 7421 (defining an "interconnection charge" to be paid by all parties interconnecting with the LEC switched access network, that serves the function of a contribution charge for expanded interconnection for switched transport).

[143] *Virtual Collocation Order*, 9 FCC Rcd at 5190.

[144] *Id.*

[145] *See id.*

[146] SWB Rebuttal at 15 & n.23.

[147] Paul Joskow & Alvin Klevorick, *A Framework for Analyzing Predatory Pricing Policy*, 89 Yale L.J. 213 (1979); Janusz A. Ordover & Garth Saloner, *Predation, Monopolization, and Antitrust*, in 1 Richard Schmalensee & Robert Willig, *Handbook of Industrial Organization*, 537, 550-62, 590 (1989) (game theory "has been effective in debunking the comfortable proposition that predatory

71. Moreover, anticompetitive pricing can occur without an incumbent necessarily lowering prices with which its rival competes. A monopoly provider of an essential service to a rival can subject its rival to a "price squeeze." Since the interconnector is both customer and competitor of the LEC, an interconnector's price for the service it provides to its retail customers depends on the price at which the LEC sells bottleneck facilities that are the critical productive inputs for the interconnector. Because the interconnector would flow through any increased overhead loading levels to its retail customers, the interconnector's retail prices would rise. On the other hand, the LEC's retail prices would remain constant because the LEC does not use expanded interconnection services for provision of special and switched access services. The practice of assigning high overheads to the LEC facilities upon which interconnectors rely to provide competitive services, while assigning low overheads to services against which interconnectors are seeking to compete, is the anticompetitive behavior that we sought to minimize in the *Virtual Collocation Order*. Raising rivals' costs can be a profitable and inexpensive strategy for vertically integrated firms that control essential facilities needed by its rivals.[148]

72. Further, we reject BellSouth's argument that the cross-connect element, which BellSouth identifies as the only service it provides to interconnectors, is too small a cost component to have a significant impact on an interconnector's total service provisioning costs.[149] An interconnector ordering virtual collocation service must purchase numerous rate elements as part of an operational virtual collocation service offering, and must pay a cross-connect rate, as well as rates associated with other elements such as cable support and installation. We find that the sum total of these rates can have a significant impact on an interconnector's total service provisioning costs. Even if, as BellSouth argues, the cross-connect element is the only service it provides to interconnectors, BellSouth could load excessive overhead costs onto this critical input, thus increasing an interconnector's total service provisioning costs.

73. **Comparable Overhead Loading Standard.** We also reject arguments that the Bureau improperly chose the lowest loading assigned to the LECs' comparable DS1 and DS3 services as the basis for its overhead adjustments, rather than an average of the loadings assigned to all of the LECs' comparable services. This argument ignores the fact that interconnectors' offerings do not compete against a theoretical "bundle" of LEC DS1 and DS3

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conduct is more costly to the predator than to the prey and, hence, is irrational and not likely to occur").

[148] Janusz A. Ordover & Garth Saloner, *Predation, Monopolization, and Antitrust*, in 1 Richard Schmalensee & Robert Willig, *Handbook of Industrial Organization*, 537, 565-70 (1989); T.G. Krattenmaker and Steven Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price*, 96 Yale L.J. 209 (1986); Steven Salop and D.T. Scheffman, *Raising Rivals' Costs*, 73 American Econ. Rev. 267 (1983).

[149] BellSouth Rebuttal at 4.

services with an averaged overhead loading. The LEC service priced with the lowest overhead loading is likely to be the service against which an interconnector's offerings directly compete.[150] The use of averaged loadings for virtual collocation services would leave interconnectors facing excessive costs in those markets where competition is most likely, particularly since we have granted LECs considerable pricing flexibility as a result of providing expanded interconnection services.[151]

74. We, therefore, find that the LECs have not refuted the Bureau's determination that its approach was necessary to facilitate efficient entry by interconnectors seeking to compete in the interstate access service market. In order to advance our pro-competitive goals, this Order prescribes maximum permissible overhead loading levels for Bell Atlantic, BellSouth, GTE, SWB, United, and US West, based on the lowest loadings assigned to these LECs' comparable DS1 and DS3 services. As for Ameritech and CBT, we emphasize that our lowest overhead loading standard will be applied in assessing the reasonableness of future virtual collocation tariffs.

75. We recognize that competition can provide a more effective constraint on unreasonable pricing than even the most effective regulation. Competition and efficient pricing resulting from market conditions should result in optimal quantities of telecommunications services provided to customers. Indeed, in other circumstances, we have concluded that overhead loadings may reasonably vary among regulated LEC service offerings in order to enable pricing under regulation to emulate pricing in a competitive market as closely as possible.[152] However, we must balance LEC flexibility in assigning overheads with our goal of facilitating efficient entry into interstate access service markets by efficient providers. We recognize that competition depends on the ability of competitors to purchase LEC facilities at rates that reflect economic costs, and not rates that are calculated to deter entry by efficient providers. Thus, the potential for LECs to engage in anticompetitive behavior by the assignment of overheads requires that, in view of the unique circumstances of expanded interconnection, we restrict the ability of the LECs to assign overheads based on market conditions.

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[150] *See* paras. 39-46, *supra*.

[151] *See* note 96, *supra*.

[152] Further, we have determined that such deviations from uniform overhead loadings may, in some cases, maximize the consumer welfare created by regulated carriers. *See* Transport Rate Structure and Pricing, Third Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-213, 10 FCC Rcd 3030 (1994); *Virtual Collocation Order*, 9 FCC Rcd at 5199.

IV. OTHER ISSUES

A. Overhead Loadings Assigned to Nonrecurring Charges

1. Introduction

76. The *Phase I Designation Order* directed Bell Atlantic, SWB, US West, and any other LEC proposing to recover overhead loadings from nonrecurring charges associated with virtual collocation services, to explain why this practice is reasonable.[153] The Bureau also required LECs to explain whether overhead loadings are recovered through any nonrecurring charges associated with comparable DS1 and DS3 services.[154]

2. Pleadings

77. **Direct Cases.** The LECs defend their assignment of overhead loadings to nonrecurring charges associated with virtual collocation services. For example, US West contends that unless it assigns overhead loadings to its virtual collocation nonrecurring charges, it is unable to recover overhead costs that are not attributable solely to providing virtual collocation services.[155] SWB asserts that its rate structure assures recovery of its overhead costs where capital costs are incurred.[156] According to BellSouth, there is no need to recover overhead loadings in its nonrecurring charges for comparable services because it recovers overhead loadings through numerous recurring rate elements.[157]

78. Ameritech asserts that the assignment of overheads to nonrecurring charges associated with virtual collocation services is consistent with the methodology for cost-based rate development that was employed by Ameritech prior to price cap regulation.[158] Ameritech claims that it recovers overhead loadings on nonrecurring charges associated with its comparable DS1 and DS3 services.[159] Bell Atlantic contends that it assigns an overhead

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[153] Nonrecurring charges generally recover one-time labor costs or one-time capital outlays.

[154] *Phase I Designation Order* at paras. 23-24.

[155] US West Direct Case at 12.

[156] SWB Direct Case, App. 12 at 1.

[157] BellSouth Direct Case, Exhibit 1 at 4.

[158] Ameritech Direct Case at 8.

[159] *Id.* at 9-10.

loading to the service activation nonrecurring charge that is imposed on both virtual collocation and channel termination customers.[160]

79. **Oppositions.** Several commenters argue that the Commission should prohibit LECs from assigning overheads to their nonrecurring charges for virtual collocation service.[161] MFS asserts that such action would protect interconnectors against excessive nonrecurring charges.[162] MFS further contends that the Commission should require SWB to tariff provisions that would allow an interconnector that pays these loaded nonrecurring charges to realize the full value and benefit of designated equipment.[163] Time Warner avers that the overhead loadings imposed by Ameritech and BellSouth should be removed unless the LEC applies the equivalent loadings to nonrecurring charges for its comparable services.[164]

80. **Rebuttals.** In response to MFS, US West maintains that it cannot recover nonrecurring costs through recurring rates for virtual collocation service, a month-to-month offering.[165] US West further argues that because it does not apply annual cost factors to its one-time equipment charges, no refund mechanism is necessary.[166] Ameritech denies using an annual cost factor to develop its allocation of overheads to nonrecurring charges.[167]

3. Discussion

81. The Bureau's request for information regarding overhead loadings assigned to the LECs' nonrecurring charges for virtual collocation service was aimed primarily at ensuring that LECs extend the same treatment of overhead assignment to customers of their comparable DS1 and DS3 services with the lowest overhead loadings. We are convinced that

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[160] Bell Atlantic Direct Case at 11.

[161] *See, e.g.*, Fibernet Opposition at 19-20; MFS Opposition at 22-25. MFS states that Ameritech, Bell Atlantic, BellSouth, SWB, and US West engage in this practice, while CBT does not recover overhead loadings from its virtual collocation nonrecurring charges. *Id.* at 22-23.

[162] *Id.* at 24.

[163] *Id.* at 25.

[164] Time Warner Opposition at 28.

[165] US West Rebuttal at 13-14. Moreover, US West notes that because it will soon be adopting a $1 sale and repurchase arrangement, there will be no need to spread the costs of equipment out over time. *Id.* at 14.

[166] *Id.* at 13.

[167] Ameritech Rebuttal at 5-6; *see also* SWB Direct Case at App. 3, pp. 1-2.

the Bureau's overhead adjustment successfully accomplishes that goal. Therefore, based on the current record, we conclude that LECs may recover overhead loadings on their virtual collocation nonrecurring charges as long as these loadings do not exceed the lowest overhead loadings assigned to their comparable DS1 and DS3 services. The Bureau will examine the level of direct costs recovered by the LECs' virtual collocation nonrecurring charges, as well as the propriety of recovering recurring costs through nonrecurring charges, in the Phase II designation order in this docket.

B. Bell Atlantic's Nonrecurring Installation Charges

1. Background

82. In the *Phase I Designation Order*, the Bureau examined the overhead loading assigned to Bell Atlantic's nonrecurring virtual collocation charges for installation of a DS3 cross-connect. As the Bureau explained, Bell Atlantic's virtual collocation tariff states that the nonrecurring charge for installation of a DS3 cross-connect is set forth in a section of Bell Atlantic's special access tariff that specifies an $1,800 charge that applies to installation of all DS3 channel termination services. The Bureau observed that interconnectors are assessed additional nonrecurring charges totaling $8,316 in conjunction with installation of virtual collocation service.[168]

83. The Bureau noted that the *Virtual Collocation Tariff Suspension Order* adjusted Bell Atlantic's cross-connect installation nonrecurring charge based on the lowest overhead loading assigned to a comparable DS3 service. Bell Atlantic had submitted information regarding this 23 percent loading in its cost support submission, but had not specified whether the loading is included only in recurring charges or also in the $1,800 nonrecurring installation charge. In a subsequent *ex parte* submission, Bell Atlantic asserted that the Bureau should not have adjusted its $1,800 cross-connect nonrecurring charge with this 23 percent overhead loading because the loading does not apply to the $1,800 nonrecurring installation charge imposed on all DS3 channel termination services.[169]

84. The *Phase I Designation Order* required Bell Atlantic to explain why its virtual collocation tariff imposes an $1,800 nonrecurring charge for complete installation of a comparable DS1 special access channel termination service, but requires interconnectors to pay additional nonrecurring charges in conjunction with the installation of virtual collocation services. Further, the Bureau asked Bell Atlantic to submit data showing the overhead loadings and direct cost studies for all of the nonrecurring charges associated with its comparable DS1 and DS3 services.[170]

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[168] *Phase I Designation Order* at para. 25.

[169] *Id.* at paras. 26-27.

[170] *Id.* at para. 28.

2. Pleadings

85. **Direct Case.** Bell Atlantic asserts that its installation nonrecurring charges for virtual collocation recover the unique costs associated with engineering and installation of the different types of interconnector-designated equipment.[171] Bell Atlantic submits that it recovers these costs through rate elements unique to collocation; once these activities have been completed, it charges interconnectors the same $1,800 service activation fee that it assesses customers of its comparable channel termination service.[172]

86. Bell Atlantic maintains that the installation costs for its comparable DS1 and DS3 services are capitalized and recovered through the capital costs included in the recurring charges for those services. Bell Atlantic asserts that because there are no capital costs associated with the maintenance of the interconnector-designated equipment, the installation costs for this equipment had to be recovered through discrete rate elements.[173]

87. **Opposition.** MFS disputes Bell Atlantic's claim that virtual collocation service necessitates nonrecurring charges for installation, design, and engineering of interconnector-designated equipment. MFS notes that in most cases, it designates the same equipment Bell Atlantic uses.[174]

88. **Rebuttal.** Bell Atlantic reiterates its earlier arguments, and submits that its installation costs do not vary based on whether or not it uses the same type of equipment as the interconnector.[175]

3. Discussion

89. In its direct case, Bell Atlantic seeks to demonstrate that its cross-referenced $1,800 virtual collocation cross-connect nonrecurring installation charge recovers the same costs as the $1,800 "service activation charge" imposed on customers of its DS3 channel termination services. To justify the virtual collocation nonrecurring charges assessed in addition to this $1,800 installation charge, Bell Atlantic states that it recovers additional installation costs from customers of its comparable DS1 and DS3 services, but that it recovers such costs through recurring charges. Bell Atlantic's direct case cost submission, however, does not support its position.

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[171] Bell Atlantic Direct Case at 13-15.

[172] *Id.* at 14.

[173] *Id.* at 14-15 n.15.

[174] MFS Opposition at 12-13.

[175] Bell Atlantic Rebuttal at 10.

90. As an initial matter, Bell Atlantic's direct case fails to verify that the cross-referenced $1,800 installation charge for virtual collocation cross-connects recovers the same costs as the $1,800 service activation charge imposed on customers of its comparable DS3 services. Bell Atlantic has also omitted crucial data regarding the installation costs recovered by recurring charges associated with its DS3 channel termination service. For example, Bell Atlantic has failed to populate the Installation Function chart contained in the Bureau's Tariff Review Plan for this comparable DS3 service. In the *Phase I Designation Order*, the Bureau required Bell Atlantic to delineate the installation costs recovered by the rates associated with Bell Atlantic's comparable services.[176]

91. Nor has Bell Atlantic submitted on the record any additional data regarding the overhead loading assigned to the $1,800 nonrecurring installation charge associated with its comparable DS3 channel termination service. Based on the current record, we conclude that the Bureau properly adjusted Bell Atlantic's virtual collocation cross-connect nonrecurring installation charge based on the lowest loading for Bell Atlantic's comparable DS3 service: the 23 percent overhead loading submitted in conjunction with the September 1, 1994 virtual collocation tariff filing. The Bureau will seek information as to the level of the direct costs recovered by Bell Atlantic's virtual collocation nonrecurring installation charge in the Phase II designation Order in this docket.

V. OVERHEAD LOADING PRESCRIPTION

A. SWB, CBT, and Ameritech

1. Background

92. In the *Phase I Designation Order*, the Bureau required LECs to provide certain direct cost data that they had failed to submit in response to the *TRP Order*.[177] The Bureau observed that the LECs neither submitted disaggregated investment amounts by service component nor the annual cost factors applied to each unit investment component of their comparable DS1 and DS3 services.[178] The Bureau also directed LECs, *inter alia*, to explain

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[176] *Phase I Designation Order* at para. 17(d).

[177] For example, the Bureau observed that LECs neither submitted disaggregated investment amounts by service component nor the annual cost factors applied to each unit investment component of their comparable DS1 and DS3 services. *Phase I Designation Order* at para. 16. The Bureau also directed LECs, *inter alia*, to explain whether they applied annual cost factors in the same manner to the investment components of their comparable services and virtual collocation services. *Id.*

[178] *Id.* at para. 16.

whether they applied annual cost factors in the same manner to the investment components of their comparable services and virtual collocation services.[179]

93. Although the LECs claim in their direct cases that their cost support data demonstrate that they applied annual cost factors to their investment components in the same manner that they applied annual cost factors to their comparable DS1 and DS3 services,[180] Ameritech, CBT, and SWB requested confidential treatment of their disaggregated direct cost information.[181] Earlier in the expanded interconnection proceeding, Ameritech and CBT requested confidential treatment of the overhead loading and direct cost data associated with their comparable DS1 and DS3 services.[182]

2. Pleadings

94. **Direct Cases.** Ameritech and CBT assert that the disaggregated investment information for each component of their DS1 and DS3 services constitutes trade secrets. SWB maintains that disclosure of its direct cost materials "could substantially harm the competitive position of SWB or its suppliers."[183]

95. **Oppositions.** Commenters urge the Bureau to reject the LECs' requests for confidential treatment of direct case data.[184] MCI asserts that in light of the LECs' incentives to engage in price discrimination, it is essential that they provide complete cost support on the public record. Moreover, MCI avers that SWB, Ameritech, and CBT offer no justification as to why their cost support should be treated as confidential.[185] MCI argues

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[179] *Id.* at para. 17(c).

[180] *See, e.g.*, Ameritech Direct Case at 3; CBT Direct Case, App. A at 1.

[181] *See* Letter from Michael S. Pabian, Ameritech (March 21, 1995); Letter from Alfred J. Titus, Jr., CBT (March 21, 1995); Letter from Thomas A. Pajda, SWB (March 21, 1995). On April 14, 1995, MFS filed FOIA requests to obtain cost support data filed with the direct cases of SWB and CBT.

[182] *See* Letter from Alfred J. Titus, Jr., CBT (May 20, 1994); Letter from Michael S. Pabian, Ameritech (November 23, 1994).

[183] *See* Letter from Thomas A. Pajda, SWB (March 21, 1995).

[184] ALTS Opposition at 8-10; Fibernet Opposition at 5 (with respect to SWB); MCI Opposition at 5-10; MFS Opposition at 2-5, 13; Teleport Opposition at 1-2; Time Warner Opposition at 5-6 .

[185] MCI Opposition at 5-10. MCI asserts, however, that the Bureau correctly ruled that the public interest would best be served, without harming SWB or its vendors, by releasing SWB's cost support for its virtual collocation rates under the restrictions of a protective order. *Id.* at 6 n.15 (*citing November 1, 1994 FOIA Ruling*).

that the public interest will best be served by allowing all interested parties to participate fully in the ongoing expanded interconnection proceedings.[186] ALTS recommends that the Bureau's overhead adjustments remain in effect pending the submission of direct case data and the Commission's ultimate disposition of the overhead loading issue.[187] MFS and Fibernet complain that they have not been permitted to review SWB's cost support for its initial virtual collocation tariff filing because of SWB's pending application for review of the Bureau's protective Order.[188]

96. **Rebuttals.** SWB argues that commenters have not provided a sufficient reason to release SWB's cost and overhead data.[189] CBT replies that its detailed, disaggregated investment information for each component of its DS1/DS3 access services constitutes trade secrets, and is precisely the type of information that the Commission's confidentiality rules are designed to protect.[190] Moreover, CBT avers, the "public version" of its direct case contains sufficient information for parties to evaluate CBT's tariff. CBT also submits that it is willing to discuss disclosure of the data to interested parties pursuant to a nondisclosure agreement.[191] Ameritech clarifies that it did not seek confidential treatment of all cost data associated with its interconnection services, only newly developed information concerning the forward-looking costs associated with its DS1 and DS3 access services. According to Ameritech, these data did not play a role in setting the current rates for these services. In addition, Ameritech maintains that it has justified its request for confidentiality.[192]

3. Discussion

97. Based on our review of these LECs' direct cases and accompanying cost support data filed in response to the *Phase I Designation Order*, including the information for which confidentiality is sought, and for the reasons discussed above, we affirm the Bureau's finding that SWB has failed to meet its burden of proof under Section 204(a) of the Act of demonstrating that its overhead loading levels are just and reasonable. Thus, we conclude that SWB has not shown that its virtual collocation rates are just and reasonable and in

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[186] MCI Opposition at 7; *see also* ALTS Opposition at 9.

[187] ALTS Opposition at 10.

[188] MFS Opposition at 2-3; Fibernet Opposition at 4. Fibernet maintains that it will supplement its response when it is allowed access to SWB's data. Fibernet Opposition at 5.

[189] SWB Rebuttal at 1-4.

[190] CBT Rebuttal at 1-2.

[191] *Id.* at 2.

[192] Ameritech Rebuttal at 6-8. Ameritech does not object to disclosure to interested parties subject to a protective agreement that is enforced by the Commission. *Id.* at 8 n.25.

compliance with the Act. Therefore, pending resolution of SWB's request for confidential treatment, we will prescribe on an interim basis the maximum permissible overhead loading levels for SWB pending further investigation. We also affirm, on an interim basis, the Bureau's conclusion that Ameritech's and CBT's overhead loadings appear to comport with this Commission's overhead loading standard. We make this latter conclusion on an interim basis because, depending on what is contained in additional materials that may be in the record after we resolve the confidentiality issue, our conclusion could be different.

98. We note that we are proceeding with an interim prescription for SWB despite the fact that the public record may be supplemented when the confidentiality issue is resolved because we believe that the public interest requires that we take immediate steps to ensure that rate levels based on reasonable overhead loadings are in place. Otherwise, the Commission's virtual collocation policy, designed to open the interstate access service market to greater competition, could be thwarted by the delay in resolving the LECs' requests for confidential treatment of their cost support data. For this reason, we believe that ensuring rate stability pending a final prescription of overhead loading levels is important to achieving the Commission's public interest goals in the virtual collocation proceeding.

99. Our interim prescription is subject to adjustment in either direction at the conclusion of our investigation. We hereby establish a two-way adjustment mechanism that will protect both SWB and its interconnector customers until we finally prescribe just and reasonable overhead loading levels for SWB. Accordingly, we will provide an opportunity for carrier recoupment if, at the conclusion of our investigation, we determine that the interim rates are below a just and reasonable level. Conversely, our arrangement will provide an opportunity for interconnectors to receive refunds if we later conclude that interim rates are above the just and reasonable level. We find support for our action in the *Lincoln Telephone* decision,[193] which provided the basis for our interim overhead loading prescription in the physical collocation tariff proceeding.[194]

100. In light of the current record, we believe that a prescription of the maximum level of overhead loadings that is based on the interim overhead adjustment set forth in the *Virtual Collocation Tariff Suspension Order* will prevent unreasonable discrimination against interconnectors seeking to compete in the interstate access service market, without hampering SWB's ability to compete effectively. Accordingly, pursuant to our authority under Section

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[193] Lincoln Telephone and Telegraph's Duty to Furnish Interconnection Facilities to MCI Telecommunications Corporation, Declaratory Order, 72 FCC 2d 724 (1979), *aff'd*, 652 F.2d 136 (D.C. Cir. 1981) (*Lincoln Telephone*).

[194] In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, Phase I, First Report and Order, 8 FCC Rcd 8344 (1993).

4(i) of the Communications Act, 47 U.S.C. § 154(i),[195] and ancillary to our authority under Sections 201 and 205 of the Communications Act, 47 U.S.C. §§ 201 and 205, to require interconnection at just and reasonable rates, and to prescribe lawful rates, we prescribe on an interim basis the maximum permissible overhead loadings for SWB. Appendix C to this Order sets forth Rate Adjustment Factors (RAFs) that SWB must apply to its virtual collocation rates filed between September 1, 1994 and December 9, 1994. In addition, SWB must apply the relevant RAFs in Appendix C to its virtual collocation rates filed between December 9, 1994 and the release date of this Order. These RAFs, when multiplied by the relevant rates, will result in rates that reflect the maximum permissible overhead loading levels for the interim period, pending our further investigation.

B. Bell Atlantic, BellSouth, GTE, United, and US West

101. Based on our review of the LECs' direct cases and accompanying cost support data filed in response to the *Phase I Designation Order*, we affirm the Bureau's finding that Bell Atlantic, BellSouth, GTE, United (except as discussed below), and US West have failed to meet their burden of proof under Section 204(a) of demonstrating that their overhead loading amounts are just and reasonable. Thus, we conclude that these LECs have not shown that their virtual collocation rates are just and reasonable in compliance with the Act, and therefore find these rates to be unlawful. With respect to United, however, we note that the Bureau's *Virtual Collocation Tariff Suspension Order* did not adjust the overhead loading levels for two study areas within the United companies, Central of North Carolina and Central of Virginia.[196] Based on the record before us, we now affirm that the overhead loading levels for these two United study areas comport with this Commission's overhead loading standard and we, therefore, conclude that these overhead loadings are not unlawful.[197]

102. We conclude that a final prescription of the maximum level of overhead loadings that is based on the interim overhead adjustment set forth in the *Virtual Collocation Tariff Suspension Order* will adequately prevent unreasonable discrimination against interconnectors seeking to compete in the interstate access service market, without hampering the LECs' ability to compete effectively. Accordingly, pursuant to our authority under Sections 201 and 205 of the Act, 47 U.S.C. §§ 201 and 205, to require interconnection at just and reasonable rates and to prescribe lawful rates, we prescribe on a permanent basis the maximum permissible overhead loadings for virtual collocation services. Appendix C to this Order sets forth RAFs for these LECs that these LECs must apply to their virtual collocation

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[195] Section 4(i) gives the Commission authority to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." Section 4(i) of the Act, 47 U.S.C. § 154(i).

[196] *See Virtual Collocation Tariff Suspension Order* , Appendix C at 2.

[197] *See* para. 104, *infra*.

rates filed between September 1, 1994 and December 9, 1994. In addition, LECs must apply these RAFs to their virtual collocation rates filed between December 9, 1994 and the release date of this Order. These RAFs, when multiplied by the relevant rates, will result in rates that reflect the maximum permissible overhead loading levels.

VI. CONCLUSION

103. We have reviewed the LECs' direct cases, the oppositions, and the rebuttals. In light of the current record, we find that most LECs have not justified their proposed overhead loadings, and that these LECs' rates for virtual collocation service are therefore unlawful. With respect to SWB, we find that our interim prescription of the maximum overhead loading levels, subject to any necessary adjustment and to possible refunds or supplemental payments, is the most reasonable and practical method of promoting the public interest in ensuring that virtual collocation service is available at fair rates pending the conclusion of our investigation of its overhead loading levels. Our final prescription of the maximum overhead loading levels for Bell Atlantic, BellSouth, GTE, United, and US West will ensure that these LECs' overhead loadings are set at just and reasonable levels.

VII. ORDERING CLAUSES

104. Accordingly, **IT IS ORDERED**, pursuant to Sections 204(a) and 201(b) of the Communications Act, 47 U.S.C. §§ 204(a) and 201(b), that the rates for virtual collocation service subject to this investigation filed by Bell Atlantic Telephone Companies, BellSouth Telephone Company, GTE System Telephone Companies, GTE Telephone Operating Companies, Southwestern Bell Telephone Company, United and Central Telephone Companies (except for Central of North Carolina and Central of Virginia), and US West Communications, Inc., are unjust and unreasonable, and therefore unlawful.

105. **IT IS FURTHER ORDERED**, pursuant to Sections 4(i), 201, and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 201, and 205, that during the interim period from May 15, 1995 to the conclusion of the investigation, the rates for virtual collocation service filed by Southwestern Bell Telephone Company shall be determined by applying the relevant Rate Adjustment Factors (RAFs) set forth in Appendix C to this Order to their virtual collocation rates filed between September 1, 1994 and December 9, 1994. Southwestern Bell Telephone Company also must apply these RAFs to its virtual collocation rates filed between December 9, 1994 and the release date of this Order.

106. **IT IS FURTHER ORDERED**, pursuant to Sections 201 and 205 of the Communications Act, 47 U.S.C. §§ 201 and 205, that the rates for virtual collocation service filed by Bell Atlantic Telephone Companies, BellSouth Telephone Company, GTE System Telephone Companies, GTE Telephone Operating Companies, United and Central Telephone Companies, and US West Communications, Inc. shall be determined by applying the RAFs set forth in Appendix C to this Order to their virtual collocation rates filed between September 1, 1994 and December 9, 1994. These local exchange carriers also must apply

these RAFs to their virtual collocation rates filed between December 9, 1994 and the release date of this Order.

107. **IT IS FURTHER ORDERED** that the local exchange carriers listed in Appendix A must file tariff pages, within five business days from the release date of this Order, to become effective on one day's notice, which reflect the revised rates consistent with this Order. Such revised tariff pages should clearly reflect that the revised rates for virtual collocation service are effective May 15, 1995. For this purpose, Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58 and 61.59, **ARE WAIVED**. Local exchange carriers shall cite the "DA" number of this Order as the authority for this filing.

108. **IT IS FURTHER ORDERED** that the investigation of the overhead loadings assigned to the virtual collocation rates filed by the Bell Atlantic Telephone Companies, BellSouth Telephone Company, GTE System Telephone Companies, GTE Telephone Operating Companies, United and Central Telephone Companies, and US West Communications, Inc. is hereby terminated.

109. **IT IS FURTHER ORDERED** that for Bell Atlantic Telephone Companies, BellSouth Telephone Company, GTE System Telephone Companies, GTE Telephone Operating Companies, United and Central Telephone Companies, and US West Communications, Inc. the accounting order set forth in the Bureau's December 9, 1994 *Virtual Collocation Tariff Suspension Order* shall remain in effect pending resolution of all other issues designated in the investigation of the virtual collocation tariffs. Thus, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), these local exchange carriers **SHALL KEEP ACCURATE ACCOUNT** of all earnings, costs, and returns associated with the rates that are the subject of this investigation, and of all amounts paid thereunder and by whom such amounts are paid.

110. **IT IS FURTHER ORDERED** that the accounting order set forth in the Bureau's December 9, 1994 *Virtual Collocation Tariff Suspension Order* shall remain in effect pending resolution of all issues regarding the virtual collocation tariffs filed by Ameritech Operating Companies and Cincinnati Bell Telephone Companies. Thus, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), Ameritech Operating Companies and Cincinnati Bell Telephone Companies **SHALL KEEP ACCURATE ACCOUNT** of all earnings, costs, and returns associated with the rates that are the subject of this investigation, and of all amounts paid thereunder and by whom such amounts are paid. If, at the conclusion of the investigation of these local exchange carriers' virtual collocation rates, the Commission determines that the rates in effect between September 4, 1994 and December 14, 1994; December 15, 1994 and May 15, 1995; and May 15, 1995 through the conclusion of our investigation, are above just and reasonable levels, we may require these local exchange carriers to pay refunds to interconnectors for services rendered during these periods.

111. **IT IS FURTHER ORDERED** that the accounting order set forth in the Bureau's December 9, 1994 *Virtual Collocation Tariff Suspension Order* shall remain in effect pending resolution of the investigation of all issues regarding the virtual collocation tariffs filed by Southwestern Bell Telephone Company. Thus, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i) and 204(a), Southwestern Bell Telephone Company **SHALL KEEP ACCURATE ACCOUNT** of all earnings, costs, and returns associated with the rates that are the subject of this investigation, and of all amounts paid thereunder and by whom such amounts are paid. If, at the conclusion of the investigation of Southwestern Bell Telephone Company's rates, the Commission determines that the interim rates pursuant to this Order and/or the rates in effect during the suspension period are above just and reasonable levels, we may require Southwestern Bell Telephone Company to pay refunds to interconnectors for services rendered during the following three periods: (1) September 4, 1994 through December 14, 1994; (2) December 15, 1994 through May 15, 1995; and (3) May 15, 1995 through the conclusion of our investigation. If we determine that SWB's interim rates pursuant to this Order are below just and reasonable levels, we may require interconnectors to pay additional charges to Southwestern Bell Telephone Company for services rendered during the periods described above.

112. **IT IS FURTHER ORDERED** that the Bell Atlantic Telephone Companies, BellSouth Telephone Company, GTE System Telephone Companies, GTE Telephone Operating Companies, United and Central Telephone Companies, and US West Communications, Inc., shall refund any monies collected above their rates as adjusted pursuant to this Order for virtual collocation service from their customers during the period between September 4, 1994 and December 15, 1994.

113. **IT IS FURTHER ORDERED** that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

LECs Filing Direct Cases

Ameritech Operating Companies (Ameritech)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Telecommunications, Inc. (BellSouth)
Cincinnati Bell Telephone Companies (CBT)
GTE System Telephone Companies (GSTC)*
GTE Telephone Operating Companies (GTOC)*
Southwestern Bell Telephone Company (SWB)
United and Central Telephone Companies (United)
US West Communications, Inc. (US West)

*In most instances, GTOC and GSTC are referred to collectively as GTE.

APPENDIX B

Parties Filing Oppositions to the LECs' Direct Cases

Association for Local Telecommunications Services (ALTS)
(Ameritech, Bell Atlantic, BellSouth, SWB, US West)

Electric Lightwave, Inc. (ELI)
(US West)

Kansas City Fibernet, L.P. (Fibernet)
(SWB)

MCI Communications Corporation (MCI)
(Ameritech, Bell Atlantic, BellSouth, CBT, GTE, SWB, United, US West)

McLeod Telemanagement, Inc. (McLeod)
(US West)

MFS Communications Company, Inc. (MFS)
(Ameritech, Bell Atlantic, BellSouth, CBT, GTE, SWB, United, US West)

Teleport Communications Group, Inc. (Teleport)
(Ameritech, Bell Atlantic, BellSouth, GTE, SWB, US West)

Time Warner Communications Holdings, Inc. (Time Warner)
(Ameritech, Bell Atlantic, BellSouth, CBT, GTE, SWB, United, US West)

Appendix C

Rate Adjustment Factors

List of Companies and Study Areas

#	Company	Study Area	Rate Adjustment Factor
1	Ameritech	Illinois	no
2		Indiana	no
3		Michigan	no
4		Ohio	no
5		Wisconsin	no
6	Bell Atlantic	Composite	yes
7	Bell South	Composite	yes
8	Cincinnati Bell	Composite	no
9	GTE System Telephone Companies	Arkansas	yes
10		California	yes
11		Illinois	yes
12		Missouri	yes
13		Texas	yes
14		Virginia	yes
15		Washington	yes
16	GTE Telephone Operating Companies	California	yes
17		Florida	yes
18		Hawaii	yes
19		Idaho	yes
20		Illinois	yes
21		Indiana	yes
22		Kentucky	yes
23		Michigan	yes
24		Missouri	yes
25		North Carolina	yes
26		Ohio	yes
27		Oklahoma	yes
28		Oregon	yes
29		Pennsylvania	yes
30		South Carolina	yes
31		Texas	yes
32		Washington	yes
33		Wisconsin	yes
34	Southwestern Bell	Composite	yes
35	Sprint / United	Florida	yes
36		Indiana	yes
37		Missouri	yes
38		North Carolina	yes
39		Ohio	yes
40		Pennsylvania	yes
41		Tennessee & Virginia	yes
42	Sprint / Central	Florida	yes
43		Illinois	yes
44		Nevada	yes
45		North Carolina	no
46		Virginia	no
47	U S West	Composite	yes

Bell Atlantic EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhea Rate Ad Factor (e) = (d/
1	DS1 X–Connect		$2.52	$1.53	1.65	1.35	0.8
2	DS3 X–Connect		$38.45	$23.30	1.65	1.23	0.7
3	DS1 Connection Service		$61.86	$37.49	1.65	1.35	0.8
4	DS3 Connection Service		$237.86	$144.16	1.65	1.23	0.7
5	Cable Support Fee		$240.92	$146.01	1.65	1.23	0.7
6	DS1 X–Connect, install–first	NRC	$720.00	$705.26	1.02	1.02	1.0
7	DS1 X–Connect, install–add'l	NRC	$400.00	$283.81	1.41	1.35	0.9
8	DS1 X–Connect, rearrange–first	NRC	$425.00	$410.90	1.03	1.03	1.0
9	DS1 X–Connect, rearrange–first	NRC	$200.00	$132.34	1.51	1.35	0.8
10	DS3 X–Connect	NRC	$1,800.00	$705.26	2.55	1.23	0.4
11	Design and Planning Fee	NRC	$2,227.58	$2,227.58	1.00	1.00	1.0
12	Equipment Installation	NRC	$5,592.20	$5,592.20	1.00	1.00	1.0
13	Training Fee – Lodging & Meals	NRC	$107.37	$107.37	1.00	1.00	1.0
14	Cable Installation Fee	NRC	$497.26	$497.26	1.00	1.00	1.0

BellSouth EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj Factor (e) = (d/c)
1	DS1 X–Connect		$7.50	$5.76	1.30	1.30	1.0
2	DS3 X–Connect		$62.50	$48.17	1.30	1.17	0.9
3	Cable Support Structure (per cable)		$15.00	$11.41	1.31	1.17	0.8
4	Floor Space (per sq. ft.)		$5.00	$2.74	1.82	1.17	0.6
5	Floor Space (per ampere)		$4.00	$2.98	1.34	1.17	0.8
6	DS1 X–Connect – (1st)	NRC	$155.00	$127.13	1.22	1.22	1.0
7	DS3 X–Connect – (1st)	NRC	$155.00	$129.62	1.20	1.17	0.9
8	DS1 X–Connect – (add'l)	NRC	$14.00	$10.78	1.30	1.30	1.0
9	DS3 X–Connect – (add'l)	NRC	$13.00	$10.15	1.28	1.17	0.9
10	Application Fee	NRC	$3,130.00	$2,446.61	1.28	1.17	0.91
11	Cable Installation (per cable)	NRC	$2.750.00	$2.536.04	1.08	1.08	1.0

GSTC Arkansas EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$2.90	$1.84	1.57	1.24	0.79
2	DS3 X–Connect	$27.55	$17.48	1.58	1.13	0.72
3	Power Equipment	$194.46	$183.63	1.06	1.13	1.00
4	Maintenance Fee	$170.52	$157.57	1.08	1.13	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.13. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GSTC California EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$4.32	$2.64	1.63	1.63	1.00
2	DS3 X–Connect	$35.23	$21.51	1.64	1.02	0.62
3	Power Equipment	$246.31	$228.35	1.08	1.02	0.95
4	Maintenance Fee	$293.94	$278.91	1.05	1.02	0.97
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.02. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GSTC Illinois EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.58	$2.11	1.70	1.70	1.00
2	DS3 X–Connect	$34.36	$20.17	1.70	1.14	0.67
3	Power Equipment	$207.68	$196.86	1.05	1.14	1.00
4	Maintenance Fee	$189.05	$173.69	1.09	1.14	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.14. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GSTC Missouri EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.72	$2.15	1.73	1.46	0.84
2	DS3 X–Connect	$33.29	$19.21	1.73	1.24	0.72
3	Power Equipment	$193.84	$185.00	1.05	1.24	1.00
4	Maintenance Fee	$263.69	$246.22	1.07	1.24	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.24. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GSTC Texas EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$4.47	$3.00	1.49	1.49	1.00
2	DS3 X–Connect	$31.98	$21.43	1.49	1.13	0.76
3	Power Equipment	$194.05	$185.85	1.04	1.13	1.00
4	Maintenance Fee	$493.22	$481.68	1.02	1.13	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.13. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GSTC Virginia EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.56	$2.20	1.62	1.62	1.00
2	DS3 X–Connect	$32.21	$19.88	1.62	1.05	0.65
3	Power Equipment	$200.28	$188.23	1.06	1.05	0.99
4	Maintenance Fee	$227.88	$211.80	1.08	1.05	0.98
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.05. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GSTC Washington EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.71	$2.15	1.72	1.72	1.00
2	DS3 X–Connect	$34.81	$20.09	1.73	1.29	0.74
3	Power Equipment	$199.00	$175.06	1.14	1.29	1.00
4	Maintenance Fee	$218.65	$203.10	1.08	1.29	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.29. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC California Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.77	$2.60	1.45	1.23	0.85
2	DS3 X–Connect	$33.21	$22.87	1.45	1.11	0.76
3	Power Equipment	$253.91	$251.87	1.01	1.11	1.00
4	Maintenance Fee	$208.76	$194.40	1.07	1.11	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.11. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Florida EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.80	$2.80	1.36	1.25	0.92
2	DS3 X–Connect	$36.02	$26.51	1.36	1.00	0.74
3	Power Equipment	$206.71	$205.88	1.00	1.00	1.00
4	Maintenance Fee	$302.11	$288.38	1.05	1.00	0.95
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.00. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Hawaii EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.38	$2.32	1.46	1.37	0.94
2	DS3 X–Connect	$33.95	$23.29	1.46	1.22	0.84
3	Power Equipment	$253.92	$252.31	1.01	1.22	1.00
4	Maintenance Fee	$195.28	$181.12	1.08	1.22	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.22. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Idaho EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.55	$2.58	1.38	1.36	0.99
2	DS3 X–Connect	$31.29	$22.72	1.38	1.32	0.96
3	Power Equipment	$218.88	$218.14	1.00	1.32	1.00
4	Maintenance Fee	$222.02	$210.10	1.06	1.32	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.32. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Illinois EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.40	$2.52	1.35	1.03	0.76
2	DS3 X–Connect	$31.55	$23.36	1.35	1.23	0.91
3	Power Equipment	$194.44	$193.20	1.01	1.03	1.00
4	Maintenance Fee	$184.69	$172.43	1.07	1.03	0.96
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.03. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Indiana EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.42	$2.41	1.42	1.36	0.96
2	DS3 X–Connect	$30.68	$21.56	1.42	1.18	0.83
3	Power Equipment	$193.74	$192.35	1.01	1.18	1.00
4	Maintenance Fee	$194.96	$178.85	1.09	1.18	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.18. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Kentucky EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.33	$2.46	1.35	1.35	1.00
2	DS3 X–Connect	$29.65	$21.92	1.35	1.20	0.89
3	Power Equipment	$173.25	$172.41	1.00	1.20	1.00
4	Maintenance Fee	$223.43	$211.33	1.06	1.20	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.20. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Michigan EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.16	$2.28	1.39	1.39	1.00
2	DS3 X–Connect	$28.48	$20.49	1.39	1.39	1.00
3	Power Equipment	$194.85	$193.70	1.01	1.44	1.00
4	Maintenance Fee	$182.55	$169.69	1.08	1.44	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.39. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Missouri EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.35	$2.33	1.44	1.41	0.98
2	DS3 X–Connect	$29.91	$20.79	1.44	1.44	1.00
3	Power Equipment	$161.85	$161.19	1.00	1.41	1.00
4	Maintenance Fee	$259.89	$246.46	1.05	1.41	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.41. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC North Carolina EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X-Connect	$4.51	$2.83	1.59	1.45	0.91
2	DS3 X-Connect	$37.16	$23.33	1.59	1.14	0.72
3	Power Equipment	$183.84	$183.25	1.00	1.14	1.00
4	Maintenance Fee	$229.12	$213.04	1.08	1.14	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.14. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Ohio EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.56	$2.59	1.37	1.35	0.98
2	DS3 X–Connect	$32.82	$23.87	1.38	1.26	0.92
3	Power Equipment	$222.44	$221.19	1.01	1.26	1.00
4	Maintenance Fee	$189.22	$176.30	1.07	1.26	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.26. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Oklahoma EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor —(d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$2.81	$2.12	1.33	1.29	0.97
2	DS3 X–Connect	$24.78	$18.63	1.33	1.33	1.00
3	Power Equipment	$206.00	$204.63	1.01	1.29	1.00
4	Maintenance Fee	$195.51	$185.36	1.05	1.29	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.29. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Oregon EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.68	$2.64	1.39	1.10	0.79
2	DS3 X–Connect	$31.93	$22.93	1.39	1.24	0.89
3	Power Equipment	$184.99	$183.75	1.01	1.10	1.00
4	Maintenance Fee	$211.96	$199.40	1.06	1.10	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.10. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Pennsylvania EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.69	$2.72	1.35	1.00	0.74
2	DS3 X–Connect	$33.55	$24.74	1.36	1.20	0.89
3	Power Equipment	$220.80	$219.61	1.01	1.00	0.99
4	Maintenance Fee	$199.19	$186.12	1.07	1.00	0.93
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.00. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC South Carolina EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X-Connect	$4.07	$2.98	1.37	1.37	1.00
2	DS3 X-Connect	$33.48	$24.46	1.37	1.35	0.99
3	Power Equipment	$186.00	$184.81	1.01	1.35	1.00
4	Maintenance Fee	$221.36	$208.58	1.06	1.35	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.35. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Texas EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.17	$2.33	1.36	1.22	0.90
2	DS3 X–Connect	$28.00	$20.57	1.36	1.23	0.90
3	Power Equipment	$194.75	$193.42	1.01	1.22	1.00
4	Maintenance Fee	$198.42	$186.43	1.06	1.22	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.22. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Washington EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.50	$2.57	1.36	1.18	0.87
2	DS3 X–Connect	$31.09	$22.79	1.36	1.14	0.84
3	Power Equipment	$179.72	$178.47	1.01	1.14	1.00
4	Maintenance Fee	$219.95	$208.46	1.06	1.14	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.14. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GTOC Wisconsin EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$3.29	$2.40	1.37	1.37	1.00
2	DS3 X–Connect	$30.39	$22.10	1.37	1.36	0.99
3	Power Equipment	$180.02	$178.75	1.01	1.36	1.00
4	Maintenance Fee	$198.82	$186.21	1.07	1.36	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.36. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
1	Interconnection Cross Connect			
2	DS1, Per Ckt		$4.64	1.00
3	DS3, Per Ckt		$46.33	0.80
4	Switched Transport Connection			
5	Per Transport Connection		$6.04	0.58
6	Entrance Cable			
7	Per Entrance Cable	NRC	$27.86	0.47
8	Per Splice Case	NRC	$8.21	0.47
9	Per Riser Tail	NRC	$127.31	0.47
10	Non-Designated Conversion Arrangment			
11	DS1 to VG/DS0, Elec, per arrangment	NRC	$451.64	0.47
12	DS3 to DS1, Elec, per arrangment	NRC	$815.00	0.51
13				
14	DESIGNATED EQUIPMENT ARRANGEMENTS			
15				
16	AT&T DDM-1000 ASYNCHRONOUS DS3 to DS1 SERVICE			
17				
18	- BASIC ARRANGEMENT (Max 336 DS1s)		$25.85	0.47
19	- PRIMARY ARRAY (1 PER 56 DS1s)		$72.40	0.47
20	- SECONDARY ARRAY (1 FOR 28 DS1s)		$102.17	0.47
21	- TERMINATION CARD (1 PER 4 DS1s)		$18.80	0.59

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
	APPENDIX B-1		
22	AT&T DDM-2000 (OC-3) 1310nm - DS1 & DS3 SERVICE		
23	Sonet Ring Configuration		
24	- BASIC ARRANGEMENT (Max 504 DS1s /18 DS3s)	$22.23	0.47
25	- PRIMARY ARRAY , PER 84 DS1s / 3 DS3s	$426.85	0.47
26	- SECONDARY ARRAY (DS1) 1 PER 28 DS1s	$72.74	0.47
27	- SECONDARY ARRAY (DS3) 1 PER DS3	$39.28	0.47
28	- TERMINATION CARD (DS1), 1 PER 4 DS1s	$9.39	0.60
29	- TERMINATION CARD (DS3), 1 PER DS3	$21.96	0.47
30			
31	Terminal Configuration		
32	- BASIC ARRANGEMENT (Max 504 DS1s /18 DS3s)	$22.23	0.47
33	- PRIMARY ARRAY , PER 84 DS1s / 3 DS3s	$393.06	0.47
34	- SECONDARY ARRAY (DS1) 1 PER 28 DS1s	$72.74	0.47
35	- SECONDARY ARRAY (DS3) 1 PER DS3	$39.28	0.47
36	- TERMINATION CARD (DS1), 1 PER 4 DS1s	$9.39	0.60
37	- TERMINATION CARD (DS3), 1 PER DS3	$21.96	0.47
38			
39	AT&T DDM-2000 (OC-3) 1310nm - DS1 & DS3 SERVICE		
40	Linear Chain Configuration		
41	- BASIC ARRANGEMENT (1 PER 504 DS1s or 18 DS3s)	$22.23	0.47
42	- PRIMARY ARRAY , 1 PER 84 DS1s or 3 DS3s	$659.19	0.47
43	- SECONDARY ARRAY (DS1) 1 PER 28 DS1s	$72.74	0.47
44	- SECONDARY ARRAY (DS3) 1 PER DS3	$39.28	0.47
45	- TERMINATION CARD (DS1), 1 PER 4 DS1s	$9.39	0.60
46	- TERMINATION CARD (DS3), 1 PER DS3	$21.96	0.47
47			
48	AT&T DDM-2000 (OC-12) 1310nm - DS3 & OC3 SERVICE		
49			
50	Sonet Ring Configuration		
51	- BASIC ARRANGEMENT (MAX 48 DS3s OR 16 OC3s)	$22.30	0.47
52	- PRIMARY ARRAY (1 PER 12 DS3s OR 4 OC3s)	$677.45	0.47
53	- SECONDARY ARRAY (DS3) 1 PER 3 DS3s	$103.52	0.47
54	- SECONDARY ARRAY (OC3) 1 PER OC3	$79.84	0.47
55	- TERMINATION CARD (DS3), 1 PER 3 DS3s	$72.46	0.47
56	- TERMINATION CARD (OC3), 1 PER OC3	$60.72	0.47
57			
58	AT&T DDM-2000 (OC-12) 1310nm - DS3 & OC3 SERVICE		
59	Terminal Configuration		
60	- BASIC ARRANGEMENT (Max 48 DS3s, 16 OC3s OR COMB)	$22.30	0.47
61	- PRIMARY ARRAY (1 PER 12 DS3s, 4 OC3s OR COMB)	$606.60	0.47
62	- SECONDARY ARRAY (DS3) 1 PER 3 DS3s	$103.52	0.47
63	- SECONDARY ARRAY (OC3) 1 PER OC3	$79.84	0.47
64	- TERMINATION CARD (DS3), 1 PER 3 DS3s	$72.46	0.47
65	- TERMINATION CARD (OC3), 1 PER OC3	$60.72	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
	APPENDIX B-1		
66	AT&T FT-2000 (OC-48) 1310nm – DS3 & OC3 SERVICE		
67			
68	Sonet Ring Configuration		
69	– BASIC ARRANGEMENT (MAX 48 DS3s OR 8 OC3s)	$381.46	0.47
70	– PRIMARY ARRAY (1 PER 48 DS3s OR 8 OC3s OR COMB)	$865.41	0.47
71	– SECONDARY ARRAY (DS3) 1 PER 3 DS3s	$161.14	0.47
72	– SECONDARY ARRAY (OC3) 1 PER OC3	$118.20	0.47
73	– TERMINATION CARD (DS3), 1 PER 3 DS3s	$84.67	0.47
74	– TERMINATION CARD (OC3), 1 PER OC3	$93.41	0.47
75			
76	FUJITSU FLM-150 (OC-3) 1310nm DS1 & DS3 SERVICE		
77	Sonet Ring Configuration		
78	– BASIC ARRAN. (1 per 504 DS1s, 18 DS3s OR COMB)	$21.31	0.47
79	– PRIMARY ARRAY (1 per 84 DS1s, 3 DS3s OR COMB)	$748.77	0.47
80	– SECONDARY ARRAY (DS1) 1 PER 28 DS1s	$46.73	0.47
81	– SECONDARY ARRAY (DS3) 1 PER DS3	$30.83	0.47
82	– TERMINATION CARD (DS1) (1 PER 4 DS1s)	$16.82	0.60
83	– TERMINATION CARD (DS3) (1 PER DS3)	$22.14	0.47
84			
85	Terminal Configuration		
86	– BASIC ARRANGEMENT (1 per 504 DS1s, 18 DS3s OR COMB)	$21.31	0.47
87	– PRIMARY ARRAY (1 per 84 DS1s, 3 DS3s OR COMB)	$600.63	0.47
88	– SECONDARY ARRAY (DS1) 1 PER 28 DS1s	$46.73	0.47
89	– SECONDARY ARRAY (DS3) 1 PER DS3	$30.83	0.47
90	– TERMINATION CARD (DS1) (1 PER 4 DS1s)	$16.82	0.60
91	– TERMINATION CARD (DS3) (1 PER DS3)	$22.14	0.47
92			
93	FUJITSU FLM-150 (OC-3) 1310nm DS1 & DS3 SERVICE		
94	Linear Chain Configuration		
95	– BASIC ARRANGEMENT (1 per 504 DS1s, 18 DS3s OR COMB)	$21.31	0.47
96	– PRIMARY ARRAY (1 per 84 DS1s, 3 DS3s OR COMB)	$595.84	0.47
97	– SECONDARY ARRAY (DS1) 1 PER 28 DS1s	$46.73	0.47
98	– SECONDARY ARRAY (DS3) 1 PER DS3	$30.83	0.47
99	– TERMINATION CARD (DS1) (1 PER 4 DS1s)	$16.82	0.60
100	– TERMINATION CARD (DS3) (1 PER DS3)	$22.14	0.47
101	FUJITSU FLM-600 (OC-12) 1310nm DS3/OC3 SERVICE		
102	Sonet Ring Configuration		
103	– BASIC ARRANGEMENT (MAX 72 DS3s, 24 OC3s OR COMB)	$22.84	0.47
104	– PRIMARY DS3 ARRAY (1 PER 12 DS3s, 4 OC3s OR COMB)	$915.09	0.47
105	– SECONDARY DS3 ARRAY (1 PER 3 DS3s)	$49.71	0.47
106	– SECONDARY OC3 ARRAY (1 PER 2 OC3s)	$123.96	0.47
107	– TERTIARY OC3 ARRAY (1 PER OC3)	$40.62	0.47
108	– TERMINATION CARD (1 PER 3 DS3s)	$33.63	0.47
109	– TERMINATION CARD (1 PER OC3)	$40.62	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
	APPENDIX B-1		
110	FUJITSU FLM-600 (OC-12) 1310nm DS3/OC3 SERVICE		
111			
112	Terminal Configuration		
113	- BASIC ARRANGEMENT (MAX 72 DS3s, 24 OC3s OR COMB)	$22.84	0.47
114	- PRIMARY DS3 ARRAY (1 PER 12 DS3s, 4 OC3s OR COMB)	$915.09	0.47
115	- SECONDARY DS3 ARRAY (1 PER 3 DS3s)	$49.71	0.47
116	- SECONDARY OC3 ARRAY (1 PER 2 OC3s)	$123.96	0.47
117	- TERTIARY OC3 ARRAY (1 PER OC3)	$40.62	0.47
118	- TERMINATION CARD (1 PER 3 DS3s)	$33.63	0.47
119	- TERMINATION CARD (1 PER OC3)	$40.62	0.47
120			
121	Linear Chain Configuration		
122	- BASIC ARRANGEMENT (MAX 72 DS3s, 24 OC3s OR COMB)	$22.84	0.47
123	- PRIMARY DS3 ARRAY (1 PER 12 DS3s, 4 OC3s OR COMB)	$1,232.05	0.47
124	- SECONDARY DS3 ARRAY (1 PER 3 DS3s)	$49.71	0.47
125	- SECONDARY OC3 ARRAY (1 PER 2 OC3s)	$123.96	0.47
126	- TERTIARY OC3 ARRAY (1 PER OC3)	$40.62	0.47
127	- TERMINATION CARD (1 PER 3 DS3s)	$33.63	0.47
128	- TERMINATION CARD (1 PER OC3)	$40.62	0.47
129			
130	FUJITSU FLM-2400 (OC-48) 1310nm DS3/OC12 SERVICE		
131			
132	Sonet Ring Configuration		
133	- BASIC ARRANGEMENT (1 PER 96 DS3s, 8 OC12s OR COMB)	$19.47	0.47
134	- PRIMARY DS3 ARRAY (1 PER 48 DS3s, 4 OC12s OR COMB)	$1,730.41	0.47
135	- SECONDARY ARRAY (1 PER 24 DS3s, 2 OC12s OR COMB)	$164.01	0.47
136	- TERTIARY DS3 ARRAY (1 PER 12 DS3s)	$43.82	0.47
137	- TERTIARY OC12 ARRAY (1 PER OC12)	$316.01	0.47
138	- TERMINATION CARD (1 PER 3 DS3s)	$28.46	0.47
139	- TERMINATION CARD (1 PER OC12)	$152.86	0.47
140			
141	Terminal Configuration		
142	- BASIC ARRANGEMENT (1 PER 96 DS3s, 8 OC12s OR COMB)	$19.47	0.47
143	- PRIMARY DS3 ARRAY (1 PER 48 DS3s, 4 OC12s OR COMB)	$1,718.33	0.47
144	- SECONDARY ARRAY (1 PER 24 DS3s, 2 OC12s OR COMB)	$164.01	0.47
145	- TERTIARY DS3 ARRAY (1 PER 12 DS3s)	$43.82	0.47
146	- TERTIARY OC12 ARRAY (1 PER OC12)	$316.01	0.47
147	- TERMINATION CARD (1 PER 3 DS3s)	$28.46	0.47
148	- TERMINATION CARD (1 PER OC12)	$152.86	0.47
149			
150	FUJITSU FLM-2400 (OC-48) 1310nm DS3/OC12 SERVICE		
151			
152	Linear Chain Configuration		
153	- BASIC ARRANGEMENT (1 PER 96 DS3s, 8 OC12s OR COMB)	$19.47	0.47
154	- PRIMARY DS3 ARRAY (1 PER 48 DS3s, 4 OC12s OR COMB)	$1,730.41	0.47
155	- SECONDARY ARRAY (1 PER 24 DS3s, 2 OC12s OR COMB)	$164.01	0.47
156	- TERTIARY DS3 ARRAY (1 PER 12 DS3s)	$43.82	0.47
157	- TERTIARY OC12 ARRAY (1 PER OC12)	$316.01	0.47
158	- TERMINATION CARD (1 PER 3 DS3s)	$28.46	0.47
159	- TERMINATION CARD (1 PER OC12)	$152.86	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
	APPENDIX B-1		
160	FUJITSU FLM-2400 (OC-48) 1310nm OC3 SERVICE		
161			
162	Sonet Ring Configuration		
163	- BASIC ARRANGEMENT (1 PER 16 OC3s)	$19.47	0.47
164	- PRIMARY DS3 ARRAY (1 PER 16 OC3s)	$1,730.41	0.47
165	- SECONDARY ARRAY (1 PER 4 OC3s)	$848.25	0.47
166	- TERMINATION CARD (1 PER OC3)	$40.62	0.47
167			
168	FUJITSU FLM-2400 (OC-48) 1310nm OC3 SERVICE		
169			
170	Terminal Configuration		
171	- BASIC ARRANGEMENT (1 PER 16 OC3s)	$19.47	0.47
172	- PRIMARY DS3 ARRAY (1 PER 16 OC3s)	$1,718.33	0.47
173	- SECONDARY ARRAY (1 PER 4 OC3s)	$848.25	0.47
174	- TERMINATION CARD (1 PER OC3)	$40.62	0.47
175			
176	Linear Chain Configuration		
177	- BASIC ARRANGEMENT (1 PER 16 OC3s)	$19.47	0.47
178	- PRIMARY DS3 ARRAY (1 PER 16 OC3s)	$1,730.41	0.47
179	- SECONDARY ARRAY (1 PER 4 OC3s)	$848.25	0.47
180	- TERMINATION CARD (1 PER OC3)	$40.62	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
	APPENDIX B–1		
198	NORTHERN TELECOM FMT 150C ASYNCH DS3 TO DS1 SERVICE		
199			
200	– BASIC ARRANGEMENT (1 PER XX DS1s)	$62.30	0.47
201	– PRIMARY DS3 ARRAY (1 PER 56 DS1s)	$90.47	0.47
202	– SECONDARY ARRAY (1 PER 28 DS1)	$12.04	0.47
203	– TERMINATION CARD (1 PER 4 DS1)	$16.72	0.60
204			
205	TEL LABS TITAN 5500S DCC/MULTIPLEXER DS3 TO DS1 SVC		
206	– BASIC ARRANGEMENT (1 PER 3584 DS1s)	$1,538.64	0.47
207	– PRIMARY ARRAY (1 per 448 DS1s, 64 DS3s OR COMB)	$55.61	0.47
208	– SECONDARY ARRAY (DS1) (1 FOR 112 DS1s)	$265.85	0.47
209	– SECONDARY ARRAY (DS3) (1 FOR 16 DS3s)	$308.74	0.47
210	– TER. ARRAY (DS1/DS3) (1 per 896 DS1s,32 DS3s or COMB)	$71.05	0.47
211	– TERTIARY ARRAY (DS1) (1 PER 28 DS1s)	$17.41	0.47
212	– TERTIARY ARRAY (DS3) (1 PER 8 DS3s)	$43.74	0.47
213	– TERMINATION CARD (DS1) (1 PER 4 DS1s)	$15.27	0.60
214	– TERMINATION CARD (DS3) (1 PER DS3)	$38.37	0.47
215			
216	RELIANCE COMM/TEC DISC*S VG SERVICE		
217	– BASIC ARRANGEMENT (672 VG CKTS)	$637.82	0.74
218	– TERMINATION CARDS (1 PER VG CKTS)	$1.38	0.74

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
	APPENDIX B-1		
219	NORTHERN TELCOM FMT 150D ASYNCH DS3 SVC		
220	– BASIC ARRANCEMENT (1 per 48 DS3s)	$62.50	0.47
221	– PRIMARY DS3 ARRAY (1 per 6 DS3s)	$259.82	0.47
222	– SECONDARY ARRAY (1 per DS3)	$31.31	0.47
223	– TERMINATION CARD (1 PER DS3)	$28.41	0.47
224			
225	NORTHERN TELCOM S/DMS TRANSPORT NODE OC12 DS3/OC3 SVC		
226	– BASIC ARRANCEMENT (1 per 36 DS3s, 12 OC3s or COMB)	$58.97	0.47
227	– PRIMARY DS3 ARRAY (1 per 12 DS3s or 4 OC3s or COMB)	$1,402.72	0.47
228	– SECONDARY ARRAY (DS3) (1 per 12 DS3)	$167.45	0.47
229	– SECONDARY ARRAY (OC3) (1 per 4 OC3)	$109.42	0.47
230	– TERMINATION CARD (DS3) (1 PER 3 DS3s)	$68.99	0.47
231	– TERMINATION CARD (OC3) (1 PER OC3)	$45.09	0.47
232			
233	NORTHERN TELCOM S/DMS TRANSPORT NODE OC48 DS3/OC12 SVC		
234	– BASIC ARRANCEMENT (1 per 48 DS3s, 4 OC12s or COMB)	$76.90	0.47
235	– PRIMARY DS3 ARRAY (1 per 48 DS3s or 4 OC12s or COMB)	$4,028.17	0.47
236	– SECONDARY ARRAY (DS3) (1 per 48 DS3s)	$78.44	0.47
237	– SECONDARY ARRAY (OC12) (1 per OC12)	$170.28	0.47
238	– TERTIARY ARRAY (DS3) (1 PER 24 DS3s)	$20.90	0.47
239	– TERMINATION CARD (DS3) (1 PER 3 DS3s)	$69.00	0.47
240	– TERMINATION CARD (OC12) (1 PER OC12)	$149.81	0.47
241			
242	SONEPLEX DS1/DS3 SVC		
243	–BASIC ARRANCEMENT (1 per 112 DS1s or 1 per 84 DS1s and 1 DS3)	264.28	0.47
244	–PRIMARY ARRAY (1 per 28 DS1s and 1 per 1 DS3)	87.34	0.47
245	–SECONDARY ARRAY (DS1) (1 per 56 DS1s)	17.32	0.47
246	–SECONDARY ARRAY (DS3) (1 per 1 DS3)	16.83	0.47
247	–TERMINATION CARD (DS1) (1 per 1 DS1)	2.9	0.60
248	–TERMINATION CARD (DS3) (1 per 1 DS3)	33.54	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
	APPENDIX B-2			
249	NON-DESIGNATED CONVERSION ARRANGEMENTS			
250	- DS3 TO DS1 (ELEC), PER ARRANGEMENT	NRC	$202.00	1.00
251	- DS1 TO VG/DS0 (ELEC), PER ARRANGEMENT	NRC	$0.00	1.00
252	DESIGNATED EQUIPMENT ARRANGEMENTS			
253	AT&T DDM-1000 ASYNCHRONOUS DS3 to DS1 SERVICE			
254	- BASIC ARRANGEMENT (Max 336 DS1s)	NRC	$4,200.00	0.47
255	- PRIMARY ARRAY (1 PER 56 DS1s)	NRC	$11,765.00	0.47
256	- SECONDARY ARRAY (1 FOR 28 DS1s)	NRC	$16,602.00	0.47
257	- TERMINATION CARD (1 PER 4 DS1s) - FIRST	NRC	$3,160.00	0.59
258	- TERMINATION CARD (1 PER 4 DS1s) - ADDTL	NRC	$3,132.00	0.59
259	AT&T DDM-2000 (OC-3) 1310nm - DS1 & DS3 SERVICE			
260	Sonet Ring Configuration			
261	- BASIC ARRANGEMENT (Max 504 DS1s /18 DS3s)	NRC	$3,612.00	0.47
262	- PRIMARY ARRAY , PER 84 DS1s / 3 DS3s	NRC	$69,360.00	0.47
263	- SECONDARY ARRAY (DS1) 1 PER 28 DS1s	NRC	$11,820.00	0.47
264	- SECONDARY ARRAY (DS3) 1 PER DS3	NRC	$6,384.00	0.47
265	- TERMINATION CARD (DS1), 1 PER 4 DS1s - FIRST	NRC	$1,631.00	0.47
266	- TERMINATION CARD (DS1), 1 PER 4 DS1s - ADDTL	NRC	$1,603.00	0.47
267	- TERMINATION CARD (DS3), 1 PER DS3 - FIRST	NRC	$3,762.00	0.47
268	- TERMINATION CARD (DS3), 1 PER DS3 - ADDTL	NRC	$3,717.00	0.47
269				
270	AT&T DDM-2000 (OC-3) 1310nm - DS1 & DS3 SERVICE			
271	Terminal Configuration			
272	- BASIC ARRANGEMENT (Max 504 DS1s /18 DS3s)	NRC	$3,612.00	0.47
273	- PRIMARY ARRAY , PER 84 DS1s / 3 DS3s	NRC	$63,868.00	0.47
274	- SECONDARY ARRAY (DS1) 1 PER 28 DS1s	NRC	$11,820.00	0.47
275	- SECONDARY ARRAY (DS3) 1 PER DS3	NRC	$6,384.00	0.47
276	- TERMINATION CARD (DS1), 1 PER 4 DS1s - FIRST	NRC	$1,631.00	0.60
277	- TERMINATION CARD (DS1), 1 PER 4 DS1s - ADDTL	NRC	$1,603.00	0.60
278	- TERMINATION CARD (DS3), 1 PER DS3 - FIRST	NRC	$3,762.00	0.47
279	- TERMINATION CARD (DS3), 1 PER DS3 - ADDTL	NRC	$3,717.00	0.47
280				
281	Linear Chain Configuration			
282	- BASIC ARRANGEMENT (1 PER 504 DS1s or 18 DS3s)	NRC	$3,612.00	0.47
283	- PRIMARY ARRAY , 1 PER 84 DS1s or 3 DS3s	NRC	$107,112.00	0.47
284	- SECONDARY ARRAY (DS1) 1 PER 28 DS1s	NRC	$11,820.00	0.47
285	- SECONDARY ARRAY (DS3) 1 PER DS3	NRC	$6,384.00	0.47
286	- TERMINATION CARD (DS1), 1 PER 4 DS1s - FIRST	NRC	$1,631.00	0.60
287	- TERMINATION CARD (DS1), 1 PER 4 DS1s - ADDTL	NRC	$1,603.00	0.60
288	- TERMINATION CARD (DS3), 1 PER DS3 - FIRST	NRC	$3,762.00	0.47
289	- TERMINATION CARD (DS3), 1 PER DS3 - ADDTL	NRC	$3,717.00	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
290	APPENDIX B–2 AT&T DDM–2000 (OC–12) 1310nm – DS3 & OC3 SERVICE			
291	Sonet Ring Configuration			
292	– BASIC ARRANGEMENT (MAX 48 DS3s OR 16 OC3s)	NRC	$3,624.00	0.47
293	– PRIMARY ARRAY (1 PER 12 DS3s OR 4 OC3s)	NRC	$110,079.00	0.47
294	– SECONDARY ARRAY (DS3) 1 PER 3 DS3s	NRC	$16,821.00	0.47
295	– SECONDARY ARRAY (OC3) 1 PER OC3	NRC	$12,973.00	0.47
296	– TERMINATION CARD (DS3), 1 PER 3 DS3s – FIRST	NRC	$11,966.00	0.47
297	– TERMINATION CARD (DS3), 1 PER 3 DS3s – ADDTL	NRC	$11,922.00	0.47
298	– TERMINATION CARD (OC3), 1 PER OC3 – FIRST	NRC	$10,059.00	0.47
299	– TERMINATION CARD (OC3), 1 PER OC3 – ADDTL	NRC	$10,015.00	0.47
300				
301	Terminal Configuration			
302	– BASIC ARRANG. (Max 48 DS3s, 16 OC3s OR COMBINATION	NRC	$3,624.00	0.47
303	– PRIMARY ARRAY (1 PER 12 DS3s, 4 OC3s OR COMBINATI	NRC	$98,566.00	0.47
304	– SECONDARY ARRAY (DS3) 1 PER 3 DS3s	NRC	$16,821.00	0.47
305	– SECONDARY ARRAY (OC3) 1 PER OC3	NRC	$12,973.00	0.47
306	– TERMINATION CARD (DS3), 1 PER 3 DS3s – FIRST	NRC	$11,966.00	0.47
307	– TERMINATION CARD (DS3), 1 PER 3 DS3s – ADDTL	NRC	$11,922.00	0.47
308	– TERMINATION CARD (OC3), 1 PER OC3 – FIRST	NRC	$10,059.00	0.47
309	– TERMINATION CARD (OC3), 1 PER OC3 – ADDTL	NRC	$10,015.00	0.47
310				
311	AT&T FT–2000 (OC–48) 1310nm – DS3 & OC3 SERVICE			
312	Sonet Ring Configuration			
313	– BASIC ARRANGEMENT (MAX 48 DS3s OR 8 OC3s)	NRC	$61,983.00	0.47
314	– PRIMARY ARRAY (1 PER 48 DS3s OR 8 OC3s OR COMB)	NRC	$140,619.00	0.47
315	– SECONDARY ARRAY (DS3) 1 PER 3 DS3s	NRC	$26,185.00	0.47
316	– SECONDARY ARRAY (OC3) 1 PER OC3	NRC	$19,206.00	0.47
317	– TERMINATION CARD (DS3), 1 PER 3 DS3s – FIRST	NRC	$13,951.00	0.47
318	– TERMINATION CARD (DS3), 1 PER 3 DS3s – ADDTL	NRC	$13,906.00	0.47
319	– TERMINATION CARD (OC3), 1 PER OC3 – FIRST	NRC	$15,372.00	0.47
320	– TERMINATION CARD (OC3), 1 PER OC3 – ADDTL	NRC	$15,327.00	0.47
321	FUJITSU FLM–150 (OC–3) 1310nm DS1 & DS3 SERVICE			
322	Sonet Ring Configuration			
323	– BASIC ARRANG. (1 PER 504 DS1s OR 18 DS3s OR COMB)	NRC	$3,462.00	0.47
324	– PRIMARY ARRAY (1 PER 84 DS1s OR 3 DS3s OR COMB)	NRC	$121,668.00	0.47
325	– SECONDARY ARRAY (DS1) 1 PER 28 DS1s	NRC	$7,594.00	0.47
326	– SECONDARY ARRAY (DS3) 1 PER DS3	NRC	$5,009.00	0.47
327	– TERMINATION CARD (DS1), 1 PER 4 DS1s – FIRST	NRC	$2,926.00	0.60
328	– TERMINATION CARD (DS1), 1 PER 4 DS1s – ADDTL	NRC	$2,881.00	0.60
329	– TERMINATION CARD (DS3), 1 PER DS3 – FIRST	NRC	$3,791.00	0.47
330	– TERMINATION CARD (DS3), 1 PER DS3 – ADDTL	NRC	$3,746.00	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
	APPENDIX B-2			
331	FUJITSU FLM-150 (OC-3) 1310nm DS1 & DS3 SERVICE			
332	Terminal Configuration			
333	- BASIC ARRANG. (1 PER 504 DS1s OR 18 DS3s OR COMB)	NRC	$3,462.00	0.47
334	- PRIMARY ARRAY (1 PER 84 DS1s OR 3 DS3s OR COMB)	NRC	$97,596.00	0.47
335	- SECONDARY ARRAY (DS1) 1 PER 28 DS1s	NRC	$7,594.00	0.47
336	- SECONDARY ARRAY (DS3) 1 PER DS3	NRC	$5,009.00	0.47
337	- TERMINATION CARD (DS1), 1 PER 4 DS1s - FIRST	NRC	$2,926.00	0.60
338	- TERMINATION CARD (DS1), 1 PER 4 DS1s - ADDTL	NRC	$2,881.00	0.60
339	- TERMINATION CARD (DS3), 1 PER DS3 - FIRST	NRC	$3,791.00	0.47
340	- TERMINATION CARD (DS3), 1 PER DS3 - ADDTL	NRC	$3,746.00	0.47
341				
342	Linear Chain Configuration			
343	- BASIC ARRANG. (1 PER 504 DS1s OR 18 DS3s OR COMB)	NRC	$3,462.00	0.47
344	- PRIMARY ARRAY (1 PER 84 DS1s OR 3 DS3s OR COMB)	NRC	$96,817.00	0.47
345	- SECONDARY ARRAY (DS1) 1 PER 28 DS1s	NRC	$7,594.00	0.47
346	- SECONDARY ARRAY (DS3) 1 PER DS3	NRC	$5,009.00	0.47
347	- TERMINATION CARD (DS1), 1 PER 4 DS1s - FIRST	NRC	$2,926.00	0.60
348	- TERMINATION CARD (DS1), 1 PER 4 DS1s - ADDTL	NRC	$2,881.00	0.60
349	- TERMINATION CARD (DS3), 1 PER DS3 - FIRST	NRC	$3,791.00	0.47
350	- TERMINATION CARD (DS3), 1 PER DS3 - ADDTL	NRC	$3,746.00	0.47
351				
352	FUJITSU FLM-600 (OC-12) 1310nm DS3/OC3 SERVICE			
353	Sonet Ring Configuration			
354	- BASIC ARRANG. (MAX 72 DS3s, 24 OC3s OR COMB)	NRC	$3,712.00	0.47
355	- PRIMARY DS3 ARRAY (1 PER 12 DS3s, 4 OC3s OR COMB)	NRC	$148,693.00	0.47
356	- SECONDARY DS3 ARRAY (1 PER 3 DS3s)	NRC	$8,077.00	0.47
357	- SECONDARY OC3 ARRAY (1 PER 2 OC3s)	NRC	$20,142.00	0.47
358	- TERTIARY OC3 ARRAY (1 PER OC3)	NRC	$6,601.00	0.47
359	- TERMINATION CARD (DS3), 1 PER 3 DS3s - FIRST	NRC	$5,657.00	0.47
360	- TERMINATION CARD (DS3), 1 PER 3 DS3s - ADDTL	NRC	$5,613.00	0.47
361	- TERMINATION CARD (OC3), 1 PER OC3 - FIRST	NRC	$6,794.00	0.47
362	- TERMINATION CARD (OC3), 1 PER OC3 - ADDTL	NRC	$6,750.00	0.47
363				
364	Terminal Configuration			
365	- BASIC ARRANG. (MAX 72 DS3s, 24 OC3s OR COMB)	NRC	$3,712.00	0.47
366	- PRIMARY DS3 ARRAY (1 PER 12 DS3s, 4 OC3s OR COMB)	NRC	$148,693.00	0.47
367	- SECONDARY DS3 ARRAY (1 PER 3 DS3s)	NRC	$8,077.00	0.47
368	- SECONDARY OC3 ARRAY (1 PER 2 OC3s)	NRC	$20,142.00	0.47
369	- TERTIARY OC3 ARRAY (1 PER OC3)	NRC	$6,601.00	0.47
370	- TERMINATION CARD (DS3), 1 PER 3 DS3s - FIRST	NRC	$5,657.00	0.47
371	- TERMINATION CARD (DS3), 1 PER 3 DS3s - ADDTL	NRC	$5,613.00	0.47
372	- TERMINATION CARD (OC3), 1 PER OC3 - FIRST	NRC	$6,794.00	0.47
373	- TERMINATION CARD (OC3), 1 PER OC3 - ADDTL	NRC	$6,750.00	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
	APPENDIX B-2			
374	FUJITSU FLM-600 (OC-12) 1310nm DS3/OC3 SERVICE			
375	Linear Chain Configuration			
376	– BASIC ARRANG. (MAX 72 DS3s, 24 OC3s OR COMB)	NRC	$3,712.00	0.47
377	– PRIMARY DS3 ARRAY (1 PER 12 DS3s, 4 OC3s OR COMB)	NRC	$200,196.00	0.47
378	– SECONDARY DS3 ARRAY (1 PER 3 DS3s)	NRC	$8,077.00	0.47
379	– SECONDARY OC3 ARRAY (1 PER 2 OC3s)	NRC	$20,142.00	0.47
380	– TERTIARY OC3 ARRAY (1 PER OC3)	NRC	$6,601.00	0.47
381	– TERMINATION CARD (DS3), 1 PER 3 DS3s – FIRST	NRC	$5,657.00	0.47
382	– TERMINATION CARD (DS3), 1 PER 3 DS3s – ADDTL	NRC	$5,613.00	0.47
383	– TERMINATION CARD (OC3), 1 PER OC3 – FIRST	NRC	$6,794.00	0.47
384	– TERMINATION CARD (OC3), 1 PER OC3 – ADDTL	NRC	$6,750.00	0.47
385	FUJITSU FLM-2400 (OC-48) 1310nm DS3/OC12 SERVICE			
386	Sonet Ring Configuration			
387	– BASIC ARRANG. (1 PER 96 DS3s OR 8 OC12s OR COMB)	NRC	$3,164.00	0.47
388	– PRIMARY DS3 ARRAY (1 PER 48 DS3s OR 4 OC12s OR CON	NRC	$281,174.00	0.47
389	– SECONDARY ARRAY (1 PER 24 DS3s OR 2 OC12s OR CON	NRC	$26,650.00	0.47
390	– TERTIARY DS3 ARRAY (1 PER 12 DS3s)	NRC	$7,121.00	0.47
391	– TERTIARY OC12 ARRAY (1 PER OC12)	NRC	$51,348.00	0.47
392	– TERMINATION CARD (DS3), 1 PER 3 DS3s – FIRST	NRC	$4,818.00	0.47
393	– TERMINATION CARD (DS3), 1 PER 3 DS3s – ADDTL	NRC	$4,773.00	0.47
394	– TERMINATION CARD (OC12), 1 PER OC12 – FIRST	NRC	$25,031.00	0.47
395	– TERMINATION CARD (OC12), 1 PER OC12 – ADDTL	NRC	$24,986.00	0.47
396				
397	FUJITSU FLM-2400 (OC-48) 1310nm DS3/OC12 SERVICE			
398	Terminal Configuration			
399	– BASIC ARRANG. (1 PER 96 DS3s OR 8 OC12s OR COMB)	NRC	$3,164.00	0.47
400	– PRIMARY DS3 ARRAY (1 PER 48 DS3s OR 4 OC12s OR CON	NRC	$279,210.00	0.47
401	– SECONDARY ARRAY (1 PER 24 DS3s OR 2 OC12s OR CON	NRC	$26,650.00	0.47
402	– TERTIARY DS3 ARRAY (1 PER 12 DS3s)	NRC	$7,121.00	0.47
403	– TERTIARY OC12 ARRAY (1 PER OC12)	NRC	$51,348.00	0.47
404	– TERMINATION CARD (DS3), 1 PER 3 DS3s – FIRST	NRC	$4,818.00	0.47
405	– TERMINATION CARD (DS3), 1 PER 3 DS3s – ADDTL	NRC	$4,773.00	0.47
406	– TERMINATION CARD (OC12), 1 PER OC12 – FIRST	NRC	$25,031.00	0.47
407	– TERMINATION CARD (OC12), 1 PER OC12 – ADDTL	NRC	$24,986.00	0.47
408				
409	Linear Chain Configuration			
410	– BASIC ARRANG. (1 PER 96 DS3s OR 8 OC12s OR COMB)	NRC	$3,164.00	0.47
411	– PRIMARY DS3 ARRAY (1 PER 48 DS3s OR 4 OC12s OR CON	NRC	$281,174.00	0.47
412	– SECONDARY ARRAY (1 PER 24 DS3s OR 2 OC12s OR CON	NRC	$26,650.00	0.47
413	– TERTIARY DS3 ARRAY (1 PER 12 DS3s)	NRC	$7,121.00	0.47
414	– TERTIARY OC12 ARRAY (1 PER OC12)	NRC	$51,348.00	0.47
415	– TERMINATION CARD (DS3), 1 PER 3 DS3s – FIRST	NRC	$4,818.00	0.47
416	– TERMINATION CARD (DS3), 1 PER 3 DS3s – ADDTL	NRC	$4,773.00	0.47
417	– TERMINATION CARD (OC12), 1 PER OC12 – FIRST	NRC	$25,031.00	0.47
418	– TERMINATION CARD (OC12), 1 PER OC12 – ADDTL	NRC	$24,986.00	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
	APPENDIX B-2			
419	FUJITSU FLM-2400 (OC-48) 1310nm OC3 SERVICE			
420	Sonet Ring Configuration			
421	- BASIC ARRANGEMENT (1 PER 16 OC3s)	NRC	$3,164.00	0.47
422	- PRIMARY OC3 ARRAY (1 PER 16 OC3s)	NRC	$281,174.00	0.47
423	- SECONDARY ARRAY (1 PER 4 OC3s)	NRC	$137,832.00	0.47
424	- TERMINATION CARD (1 PER OC3) - FIRST	NRC	$6,794.00	0.47
425	- TERMINATION CARD (1 PER OC3) - ADDTL	NRC	$6,750.00	0.47
426	Terminal Configuration			
427	- BASIC ARRANGEMENT (1 PER 16 OC3s)	NRC	$3,164.00	0.47
428	- PRIMARY OC3 ARRAY (1 PER 16 OC3s)	NRC	$279,210.00	0.47
429	- SECONDARY ARRAY (1 PER 4 OC3s)	NRC	$137,832.00	0.47
430	- TERMINATION CARD (1 PER OC3) - FIRST	NRC	$6,794.00	0.47
431	- TERMINATION CARD (1 PER OC3) - ADDTL	NRC	$6,750.00	0.47
432	Linear Chain Configuration			
433	- BASIC ARRANGEMENT (1 PER 16 OC3s)	NRC	$3,164.00	0.47
434	- PRIMARY OC3 ARRAY (1 PER 16 OC3s)	NRC	$281,174.00	0.47
435	- SECONDARY ARRAY (1 PER 4 OC3s)	NRC	$137,832.00	0.47
436	- TERMINATION CARD (1 PER OC3) - FIRST	NRC	$6,794.00	0.47
437	- TERMINATION CARD (1 PER OC3) - ADDTL	NRC	$6,750.00	0.47
438				
439	NORTHERN TELECOM FMT 150C ASYN DS3 TO DS1 SERVICE			
440	- BASIC ARRANGEMENT (1 PER 448 DS1s)	NRC	$10,111.00	0.47
441	- PRIMARY ARRAY (1 PER 56 DS1s)	NRC	$14,683.00	0.47
442	- SECONDARY ARRAY (1 FOR 28 DS1s)	NRC	$1,955.00	0.47
443	- TERMINATION CARD (1 PER 4 DS1s) - FIRST	NRC	$2,819.00	0.60
444	- TERMINATION CARD (1 PER 4 DS1s) - ADDTL	NRC	$2,791.00	0.60
445				
446	TEL LABS TITAN 5500S DCC/MULTIPLEXER DS3 TO DS1 SERVICE			
447	- BASIC ARRANGEMENT (1 PER 3584 DS1s)	NRC	$249,687.00	0.47
448	- PRIMARY ARRAY (1 PER 448 DS1s OR 64 DS3s OR COMBN	NRC	$9,037.00	0.47
449	- SECONDARY ARRAY (DS1) (1 FOR 112 DS1s)	NRC	$43,198.00	0.47
450	- SECONDARY ARRAY (DS3) (1 FOR 16 DS3s)	NRC	$50,167.00	0.47
451	- TER. ARRAY (DS1/DS3) (1 PER 896 DS1s, 32 DS3s OR CON	NRC	$11,545.00	0.47
452	- TERTIARY ARRAY (DS1) (1 PER 28 DS1s)	NRC	$2,829.00	0.47
453	- TERTIARY ARRAY (DS3) (1 PER 8 DS3s)	NRC	$7,107.00	0.47
454	- TERMINATION CARD (DS1) (1 PER 4 DS1s) - FIRST	NRC	$2,586.00	0.60
455	- TERMINATION CARD (DS1) (1 PER 4 DS1s) - ADDTL	NRC	$2,558.00	0.60
456	- TERMINATION CARD (DS3) (1 PER DS3) - FIRST	NRC	$6,427.00	0.47
457	- TERMINATION CARD (DS3) (1 PER DS3) - ADDTL	NRC	$6,383.00	0.47
458	RELIANCE COMM/TEC DISC*S VG SERVICE			
459	- BASIC ARRANGEMENT (672 VG CKTS)	NRC	$103,640.00	0.74
460	- TERMINATION CARDS (1 PER VG CKTS) - FIRST	NRC	$330.00	0.74
461	- TERMINATION CARDS (1 PER VG CKTS) - ADDTL	NRC	$302.00	0.74

Southwestern EIS Overhead Analysis

*	Virtual EIS Rate Elements		Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
	APPENDIX B-2			
462	ENTRANCE CABLE			
463	-PER ENTRANCE CABLE (splice case M/L)	NRC	$657.00	0.47
464	-PER SPLICE CASE (expense only, MH to vault)	NRC	$1,335.00	0.47
465	-PER RISER TAIL (FDF CONN)	NRC	$20,687.00	0.47
466	ENGINEERING DESIGN CHARGE			
467	-PER EQUIPMENT ORDER	NRC	$398.00	1.00
468	ADDITIONAL LABOR CHARGE			
469	-ENGINEER, PER FIRST 1/2 HOUR	NRC	$29.62	1.00
470	-ENGINEER, PER ADDTL 1/2 HOUR	NRC	$29.62	1.00
471	-TECHNICIAN, PER FIRST 1/2 HOUR	NRC	$19.87	1.00
472	-TECHNICIAN, PER ADDTL 1/2 HOUR	NRC	$19.87	1.00
473				
474	NORTHERN TELECOM FMT 150D ASYNCH DS3 SVC			
475				
476	-BASIC ARRANCEMENT (1 per 48 DS3s)	NRC	$10,157.00	0.47
477	-PRIMARY DS3 ARRAY (1 per 6 DS3s)	NRC	$42,219.00	0.47
478	-SECONDARY ARRAY (1 per DS3)	NRC	$5,089.00	0.47
479	-TERMINATION CARD (1 per DS3) - FIRST	NRC	$4,810.00	0.47
480	-TERMINATION CARD (1 per DS3) - ADDTL	NRC	$4,765.00	0.47
481				
482	NORTHERN TELECOM S/DMS TRANSPORT NODE OC12 DS3/OC3 SVC			
483				
484	-BASIC ARRANCEMENT (1 per 36 DS3s, 12 OC3s or COMB)	NRC	$9,582.00	0.47
485	-PRIMARY DS3 ARRAY (1 per 12 DS3s or 4 OC3s or COMB)	NRC	$227,927.00	0.47
486	-SECONDARY ARRAY (DS3) (1 per 12 DS3s)	NRC	$27,210.00	0.47
487	-SECONDARY ARRAY (OC3) (1 per 4 OC3s)	NRC	$17,780.00	0.47
488	-TERMINATION CARD (DS3) (1 per 3 DS3s) - FIRST	NRC	$11,403.00	0.47
489	-TERMINATION CARD (DS3) (1 per 3 DS3s) - ADDTL	NRC	$11,359.00	0.47
490	-TERMINATION CARD (OC3) (1 per OC3) - FIRST	NRC	$7,520.00	0.47
491	-TERMINATION CARD (OC3) (1 per OC3) - ADDTL	NRC	$7,475.00	0.47
492				
493	NORTHERN TELECOM S/DMS TRANSPORT NODE OC48 DS3/OC12 SVC			
494				
495	-BASIC ARRANCEMENT (1 per 48 DS3s, 4 OC12s or COMB)	NRC	$12,496.00	0.47
496	-PRIMARY ARRAY (1 per 48 DS3s or 4 OC12s or COMB)	NRC	$654,535.00	0.47
497	-SECONDARY ARRAY (DS3) (1 per 48 DS3s)	NRC	$12,746.00	0.47
498	-SECONDARY ARRAY (OC12) (1 per OC12)	NRC	$27,669.00	0.47
499	-TERTIARY ARRY (DS3) (1 per 24 DS3s)	NRC	$3,396.00	0.47
500	-TERMINATION CARD (DS3) (1 per 3 DS3s) - FIRST	NRC	$11,405.00	0.47
501	-TERMINATION CARD (DS3) (1 per 3 DS3s) - ADDTL	NRC	$11,360.00	0.47
502	-TERMINATION CARD (OC12) (1 per OC12) - FIRST	NRC	$24,535.00	0.47
503	-TERMINATION CARD (OC12) (1 per OC12) - ADDTL	NRC	$24,490.00	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Overhead Rate Adj. Factor (e) = (d/c)
504	APPENDIX B-2 SONEPLEX DS1/DS3 SVC			
505				
506	-BASIC ARRANCEMENT (1 per 112 DS1s or 84 DS1s and 1 DS3)	NRC	$43,032.00	0.47
507	-PRIMARY ARRAY (1 per 28 DS1s and 1 per 1 DS3)	NRC	$14,222.00	0.47
508	-SECONDARY ARRAY (DS1) (1 per 56 DS1s)	NRC	$2,821.00	0.47
509	-SECONDARY ARRAY (DS3) (1 per 1 DS3)	NRC	$2,741.00	0.47
510	-TERMINATION CARD (DS1) (1 per 1 DS1) - FIRST	NRC	$665.00	0.60
511	-TERMINATION CARD (DS1) (1 per 1 DS1) - ADDTL	NRC	$620.00	0.60
512	-TERMINATION CARD (DS3) (1 per 1 DS3) - FIRST	NRC	$5,654.00	0.47
513	-TERMINATION CARD (DS3) (1 per 1 DS3) - ADDTL	NRC	$5,609.00	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Overhead Rate Adj. Factor (b)
	APPENDIX B-1		
514	Alcatel LTS1565 DS3 Service		
515			
516	Basis Arrangement (1 per 36 DS3's)	$1,220.78	0.50
517	Primary Array (1 per 12 DS3's)	$595.04	0.50
518	Termination Card (DS3) (1 per DS3)	$23.96	0.50
519			
520	Alcatel 3X50 DS1/DS3 Service		
521			
522	Basis Arrangement (1 per 336 DS1s or 1 per 24 DS3s)	$197.51	0.50
523	Primary Array (1 per 28 DS1s and 1 per 3 DS3s)	$460.72	0.50
524	Secondary Array (DS1) (1 Per 29th thru 84th DS1s)	$409.50	0.50
525	Tertiary Array (DS1) (1 per 28 DS1s)	$6.71	0.50
526	Secondary Array (DS3) (1 per 1 DS3)	$26.16	0.50
527	Termination Card (DS1) (1 per 4 DS1s)	$14.95	0.63
528	Termination Card (DS3) (1 per DS3)	$19.18	0.50
529			
530	APPENDIX B-2		
531	Alcatel LTS1565 DS3 Service		
532			
533	Basis Arrangement (1 per 36 DS3's)	$224,052.00	0.50
534	Primary Array (1 per 12 DS3's)	$109,212.00	0.50
535	Termination Card (DS3) (1 per DS3) - First	$4,591.00	0.50
536	Termination Card (DS3) (1 per DS3) - Additional	$4,546.00	0.50
537			
538	Alcatel 3X50 DS1/DS3 Service		
539			
540	Basis Arrangement (1 per 336 DS1s or 1 per 24 DS3s)	$36,251.00	0.50
541	Primary Array (1 per 28 DS1s and 1 per 3 DS3s)	$84,557.00	0.50
542	Secondary Array (DS1) (1 for 29th thru 84th DS1s)	$75,159.00	0.50
543	Tertiary Array (DS1) (1 per 28 DS1s)	$1,232.00	0.50
544	Secondary Array (DS3) (1 per 1 DS3)	$4,802.00	0.50
545	Termination Card (DS1) (1 per 4 DS1s) - First	$2,937.00	0.63
546	Termination Card (DS1) (1 per 4 DS1s) - Additional	$2,893.00	0.63
547	Termination Card (DS3) (1 per DS3) - First	$3,714.00	0.50
548	Termination Card (DS3) (1 per DS3) - Additional	$3,669.00	0.50

Southwestern EIS Overhead Analysis

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	Virtual EIS Rate Elements	Proposed Rate (a)	Overhead Rate Adj. Factor (b)
	APPENDIX B-1		
549	SONEPLEX DS1/DS3 SVC		
550	-BASIC ARRANGEMENT (1 per 112 DS1s or 1 per 84 DS1s and 1 DS3)	$229.09	0.47
551	-PRIMARY ARRAY (1 per 28 DS1s and 1 per 1 DS3)	$75.71	0.47
552	-SECONDARY ARRAY (DS1) (1 per 56 DS1s)	$13.10	0.47
553	-SECONDARY ARRAY (DS3) (1 per 1 DS3)	$14.63	0.47
554	-TERMINATION CARD (DS1) (1 per 1 DS1)	$2.52	0.60
555	-TERMINATION CARD (DS3) (1 per 1 DS3)	$29.15	0.47
556			
557	NEC IMT-150 DS1/DS3 Service		
558			
559	Basis Arrangement (1 per 420 DS1s, or 15 DS3s, or Comb.)	$108.59	0.47
560	Primary Array (1 per 84 DS1s, or 1 per 3 DS3s, or comb.)	$268.45	0.47
561	Secondary Array (DS1) (1 Per 28 DS1s)	$124.06	0.47
562	Secondary Array (DS3) (1 per DS3)	$69.64	0.47
563	Termination Card (DS1) (1 per 4 DS1s)	$4.91	0.60
564	Termination Card (DS3) (1 per DS3)	$11.52	0.47
565			
566	NEC ITS-600 DS3/OC3 Service		
567			
568	Basis Arrangement (1 per 36 DS3s, or 12 OC3s, or Comb.)	$120.73	0.47
569	Primary Array (1 per 12 DS3s, or 4 OC3s, or comb.)	$553.91	0.47
570	Secondary Array (DS3) (1 Per 3 DS3s)	$90.97	0.47
571	Secondary Array (OC3) (1 per OC3)	$73.53	0.47
572	Termination Card (DS3) (1 per 3 DS3s)	$15.77	0.47
573	Termination Card (OC3) (1 per OC3)	$35.67	0.47
574			
575	FUJITSU FLM-2400 (OC-48) 1557nm DS3 Service		
576			
577	Basis Arrangement (1 per 96 DS3s)	$59.48	0.47
578	Primary DS3 Array (1 per 48 DS3s)	$2,507.98	0.49
579	Secondary DS3 Array (1 Per 24 DS3s)	$164.01	0.47
580	Tertiary DS3 Array (1 per 12 DS3s)	$43.82	0.47
581	Termination Card (1 per 3 DS3s)	$28.46	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Overhead Rate Adj. Factor (b)
	APPENDIX B-2		
582	SONEPLEX DS1/DS3 SVC		
583	-BASIC ARRANGEMENT (1 per 112 DS1s or 1 per 84 DS1s and 1 DS3)	$42,046.00	0.47
584	-PRIMARY ARRAY (1 per 28 DS1s and 1 per 1 DS3)	$13,896.00	0.47
585	-SECONDARY ARRAY (DS1) (1 per 56 DS1s)	$2,764.00	0.47
586	-SECONDARY ARRAY (DS3) (1 per 1 DS3)	$2,685.00	0.47
587	-TERMINATION CARD (DS1) (1 per 1 DS1) - First	$656.00	0.60
588	-TERMINATION CARD (DS1) (1 per 1 DS1) - Additional	$611.00	0.60
589	-TERMINATION CARD (DS3) (1 per 1 DS3) -First	$5,543.00	0.47
590	-TERMINATION CARD (DS3) (1 per 1 DS3) - Additional	$5,498.00	0.47
591			
592	NEC IMT-150 DS1/DS3 Service		
593			
594	Basis Arrangement (1 per 420 DS1s, or 15 DS3s, or Comb.)	$19,932.00	0.47
595	Primary Array (1 per 84 DS1s, or 1 per 3 DS3s, or comb.)	$49,271.00	0.47
596	Secondary Array (DS1) (1 Per 28 DS1s)	$22,769.00	0.47
597	Secondary Array (DS3) (1 per DS3)	$12,782.00	0.47
598	Termination Card (DS1) (1 per 4 DS1s) - First	$1,094.00	0.60
599	Termination Card (DS1) (1 per 4 DS1s) - Additional	$1,050.00	0.60
600	Termination Card (DS3) (1 per DS3) - First	$2,307.00	0.47
601	Termination Card (DS3) (1 per DS3) - Additional	$2,262.00	0.47
602			
603	NEC ITS-600 DS3/OC3 Service		
604			
605	Basis Arrangement (1 per 36 DS3s, or 12 OC3s, or Comb.)	$22,159.00	0.47
606	Primary Array (1 per 12 DS3s, or 4 OC3s, or comb.)	$101,663.00	0.47
607	Secondary Array (DS3) (1 Per 3 DS3s)	$16,697.00	0.47
608	Secondary Array (OC3) (1 per OC3)	$13,495.00	0.47
609	Termination Card (DS3) (1 per 3 DS3s) - First	$3,087.00	0.47
610	Termination Card (DS3) (1 per 3 DS3s) - Additional	$3,042.00	0.47
611	Termination Card (OC3) (1 per OC3) - First	$6,739.00	0.47
612	Termination Card (OC3) (1 per OC3) - Additional	$6,695.00	0.47
613			
614	FUJITSU FLM-2400 (OC-48) 1557nm DS3 Service		
615			
616	Basis Arrangement (1 per 96 DS3s)	$10,891.00	0.47
617	Primary DS3 Array (1 per 48 DS3s)	$460,304.00	0.47
618	Secondary DS3 Array (1 Per 24 DS3s)	$26,650.00	0.47
619	Tertiary DS3 Array (1 per 12 DS3s)	$7,121.00	0.47
620	Termination Card (1 per 3 DS3s) - First	$4,818.00	0.47
621	Termination Card (1 per 3 DS3s) - Additional	$4,773.00	0.47
622	Termination Card (1 per DS3) - First	$2,307.00	0.47
623	Termination Card (1 per DS3) - Additional	$2,262.00	0.47

Southwestern EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Overhead Rate Adj. Factor (b)
624	TRAINING			
625	TRAINING COURSE & MATERIALS		$350.00	1.00
626	LODGING		$120.00	1.00
627	INTERCITY TRANSPORTATION		$530.00	1.00
628	LOCAL TRANSPORTATION – PER MILE		$0.50	1.00
629	PER DIEM		$38.00	1.00
630	AIRPORT PARKING		$6.00	1.00
631				
632	E2A ALARM COLLECTION DEVICE			
633	ARRANG. (MAX 16 SERIAL PORTS)		$106.78	0.50
634	TERM. CARD (DISCRETE) (1 PER 256 DISCRETE PORTS)		$45.12	0.50
635	TL–1 ALARM COLLECTION DEVICE			
636	ARRANGEMENT (MAX 8 PORTS)		$232.66	0.50
637	TERM. CARD (1 PER 16 SERIAL PORTS)		$43.02	0.50
638	TERM. CARD (DISCRETE) (1 PER 256 DISCRETE PORTS)		$44.55	0.50
639	NEC ACD INTERFACE (14.4K ANALOG APPLICATION)			
640	ARRANGEMENT		$63.43	0.50
641	TERM. CARD (1 PER CIRCUIT WITH MAX OF 12)		$21.50	0.50
642	CONKLIN ACD INTERFACE (64K P–T–P APPLICATION)			
643	ARRANGEMENT		$21.99	0.50
644	TERM. CARD (1 PER CIRCUIT WITH MAX OF 11)		$13.08	0.50
645	GDC ACD P–T–P INTERFACE (64th P–T–P APPL)			
646	ARRANGEMENT		$80.75	0.50
647	TERM. CARD (1 PER CIRCUIT WITH MAX OF 16)		$19.63	0.50
648	GDC ACD P–T–P ETHERNET INTERFACE			
649	ARRANGEMENT		$115.39	0.50
650	TERM. CARD (FIRST) (1 PER CIRCUIT WITH MAX OF 16)		$43.44	0.50
651	E2A ALARM COLLECTION DEVICE			
652	ARRANG. (MAX 16 SERIAL PORTS)	NRC	$19,468.00	0.50
653	TERM. CARD (DISCRETE) (1 PER 256 DIS. PORTS)	NRC	$8,420.00	0.52
654	TL–1 ALARM COLLECTION DEVICE			
655	ARRANGEMENT (MAX 8 PORTS)	NRC	$42,416.00	0.50
656	TERM. CARD (1 PER 16 SERIAL PORTS)	NRC	$8,036.00	0.52
657	TERM. CARD (DISCRETE) (1 PER 256 DISC. PORTS)	NRC	$8,297.00	0.52
658	NEC ACD INTERFACE (14.4K ANALOG APPLICATION)			
659	ARRANGEMENT	NRC	$11,565.00	0.50
660	TERM. CARD (1 PER CIRCUIT WITH MAX OF 12)	NRC	$4,114.00	0.53
661	TERM. CARD (DISCRETE) (ADDITIONAL)	NRC	$4,069.00	0.53
662	CONKLIN ACD INTERFACE (64K P–T–P APPLICATION)			
663	ARRANGEMENT	NRC	$4,009.00	0.50
664	TERM. CARD (1 PER CIRCUIT WITH MAX OF 11)	NRC	$2,579.00	0.55
665	TERM. CARD (ADDITIONAL)	NRC	$2,534.00	0.54
666	GDC ACD P–T–P INTERFACE (64th P–T–P APPL)			
667	ARRANGEMENT	NRC	$14,723.00	0.50
668	TERM. CARD (1 PER CIRCUIT WITH MAX OF 16)	NRC	$3,772.00	0.54
669	TERM. CARD (ADDITIONAL)	NRC	$3,727.00	0.53
670	GDC ACD P–T–P ETHERNET INTERFACE			
671	ARRANGEMENT	NRC	$21,038.00	0.50
672	TERM. CARD (FIRST) (1 PER CIR. WITH MAX OF 16)	NRC	$8,113.00	0.52
673	TERM. CARD (ADDITIONAL)	NRC	$8,069.00	0.51

Sprint / United FL EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$4.10	$3.08	1.33	1.33	1.00
2	DS3 X–Connect	$47.60	$39.13	1.22	1.22	1.00
3	Internal Cabling	$0.20	$0.14	1.43	1.23	0.86
4	Internal Conduit	$0.55	$0.39	1.41	1.23	0.87
5	External Cabling and Conduit	$516.40	$352.54	1.46	1.23	0.84
6	Application Fee NRC	$2.520.00	$2.520.96	1.00	1.00	1.00

Sprint / United IN EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X–Connect	$4.70	$3.42	1.37	1.37	1.0(
2	DS3 X–Connect	$56.80	$45.83	1.24	1.18	0.9(
3	Internal Cabling	$0.22	$0.15	1.47	1.18	0.8(
4	Internal Conduit	$0.61	$0.41	1.49	1.18	0.7(
5	External Cabling and Conduit	$391.40	$250.71	1.56	1.18	0.7(
6	Application Fee NRC	$2.598.00	$2.598.72	1.00	1.00	1.0(

Sprint / United MO EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj Factor (e) = (d/c
1	DS1 X–Connect	$5.00	$3.81	1.31	1.31	1.0
2	DS3 X–Connect	$69.10	$58.67	1.18	1.15	0.9
3	Internal Cabling	$0.20	$0.14	1.43	1.15	0.8
4	Internal Conduit	$0.56	$0.37	1.51	1.15	0.7
5	External Cabling and Conduit	$401.30	$259.03	1.55	1.15	0.7
6	Application Fee NRC	$2,609.00	$2,609.60	1.00	1.00	1.0

Sprint / Carolina NC EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj Factor (e) = (d/c
1	DS1 X–Connect	$4.10	$3.02	1.36	1.36	1.0
2	DS3 X–Connect	$47.00	$37.99	1.24	1.24	1.0
3	Internal Cabling	$0.20	$0.14	1.43	1.28	0.9
4	Internal Conduit	$0.54	$0.37	1.46	1.28	0.8
5	External Cabling and Conduit	$221.40	$148.21	1.49	1.28	0.8
6	Application Fee NRC	$2,856.00	$2,856.16	1.00	1.00	1.0

Sprint / United OH EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c
1	DS1 X-Connect	$4.50	$3.31	1.36	1.36	1.00
2	DS3 X-Connect	$54.10	$44.09	1.23	1.23	1.00
3	Internal Cabling	$0.21	$0.14	1.50	1.24	0.83
4	Internal Conduit	$0.56	$0.38	1.47	1.24	0.84
5	External Cabling and Conduit	$492.30	$322.09	1.53	1.24	0.81
6	Application Fee NRC	$2.746.00	$2.746.48	1.00	1.00	1.00

Sprint / United PA EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj Factor (e) = (d/c
1	DS1 X–Connect	$4.40	$3.55	1.24	1.24	1.0
2	DS3 X–Connect	$57.70	$49.91	1.16	1.12	0.9
3	Internal Cabling	$0.20	$0.14	1.43	1.12	0.7
4	Internal Conduit	$0.55	$0.40	1.38	1.12	0.8
5	External Cabling and Conduit	$265.80	$189.80	1.40	1.12	0.8
6	Application Fee NRC	$2.457.00	$2.457.76	1.00	1.00	1.0

Sprint / United TN, VA EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj Factor (e) = (d/c
1	DS1 X-Connect	$4.00	$2.91	1.37	1.37	1.0
2	DS3 X-Connect	$46.70	$37.07	1.26	1.26	1.0
3	Internal Cabling	$0.20	$0.13	1.54	1.34	0.8
4	Internal Conduit	$0.54	$0.36	1.50	1.34	0.8
5	External Cabling and Conduit	$240.10	$154.78	1.55	1.34	0.8
6	Application Fee NRC	$2,676.00	$2,676.96	1.00	1.00	1.0

Sprint / Central FL EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj Factor (e) = (d/c
1	DS1 X-Connect	$4.80	$3.48	1.38	1.38	1.0
2	DS3 X-Connect	$59.50	$47.85	1.24	1.24	1.0
3	Internal Cabling	$0.23	$0.15	1.53	1.42	0.9
4	Internal Conduit	$0.63	$0.41	1.54	1.42	0.9
5	External Cabling and Conduit	$597.10	$372.87	1.60	1.42	0.8
6	Application Fee NRC	$2,520.00	$2,520.96	1.00	1.00	1.0

Sprint / Central IL EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj Factor (e) = (d/(
1	DS1 X-Connect	$6.00	$4.24	1.42	1.42	1.0
2	DS3 X-Connect	$78.30	$63.15	1.24	1.24	1.0
3	Internal Cabling	$0.26	$0.16	1.63	1.58	0.9
4	Internal Conduit	$0.72	$0.44	1.64	1.58	0.9
5	External Cabling and Conduit	$358.50	$212.39	1.69	1.58	0.9
6	DSO ECC	$1.70	$1.07	1.59	1.58	1.0
7	Application Fee NRC	$2,704.00	$2,704.16	1.00	1.00	1.0

Sprint / Central NV EIS Overhead Analysis

	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhea Rate Ad Factor (e) = (d/
1	DS1 X-Connect	$4.40	$3.26	1.35	1.35	1.0
2	DS3 X-Connect	$56.20	$46.83	1.20	1.10	0.9
3	Internal Cabling	$0.19	$0.13	1.46	1.10	0.7
4	Internal Conduit	$0.51	$0.34	1.50	1.10	0.7
5	External Cabling and Conduit	$224.50	$145.96	1.54	1.10	0.7
6	Application Fee NRC	$2.800.00	$2.800.00	1.00	1.00	1.0

U S West EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 Entrance Facility		$21.00	$12.28	1.71	1.40	0.82
2	DS3 Entrance Facility		$75.00	$43.49	1.72	1.20	0.70
3	DS1 Switched Transport Entrance Facility		$21.00	$12.28	1.71	1.40	0.82
4	DS3 Switched Transport Entrance Facility		$75.00	$43.49	1.72	1.20	0.70
5	EIC Entrance Facility – 2 Fibers		$2.85	$1.65	1.73	1.20	0.69
6	Quotation Preparation Fee	NRC	$2,106.00	$1,404.13	1.50	1.20	0.80
7	DS1 Entrance Facility	NRC	$313.25	$266.31	1.18	1.18	1.00
8	DS3 Entrance Facility	NRC	$470.00	$273.16	1.72	1.20	0.70
9	DS1 Switched Trans. Entrance Fac.	NRC	$313.25	$266.31	1.18	1.18	1.00
10	DS3 Switched Trans. Entrance Fac.	NRC	$470.00	$273.16	1.72	1.20	0.70
11	EIC Entrance Facility – 2 Fibers	NRC	$2,064.00	$1,199.98	1.72	1.20	0.70
12	Equip Maint. (Normal Hours)	NRC	$29.25	$17.00	1.72	1.20	0.70
13	Equip Maint. (Non–Normal Hours)	NRC	$44.75	$26.00	1.72	1.20	0.70
14	Inspector (Normal Hours)	NRC	$22.00	$20.00	1.10	1.10	1.00
15	Inspector (Non–Normal Hours)	NRC	$43.00	$31.00	1.39	1.20	0.87
16	Fiber Cable Splicing, Per Set Up	NRC	$654.00	$380.00	1.72	1.20	0.70
17	Fiber Cable Splicing, Fiber Sliced	NRC	$27.50	$16.00	1.72	1.20	0.70
18	Training, Per 1/2 Hour	NRC	$34.25	$19.92	1.72	1.20	0.70

U S West EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
19	AT&T EQUIPMENT						
20	DSX-1 MODEL	NRC	$42,235.32	$32,488.71	1.30	1.20	0.92
21	DSX-3/4 MODEL	NRC	$347,225.07	$267,096.21	1.30	1.20	0.92
22	FT-2000 ADD/DROP MUX (OC3)						
23	Common Equipment	NRC	$881,890.71	$678,377.47	1.30	1.20	0.92
24	OC3 Optical Low Speed Card	NRC	$21,899.20	$16,845.54	1.30	1.20	0.92
25	Add'l Spares - Common	NRC	$201,505.81	$155,004.47	1.30	1.20	0.92
26	FT-2000 ADD/DROP MUX (48STS-1s)						
27	Common Equipment	NRC	$863,243.21	$664,033.24	1.30	1.20	0.92
28	STS-1 LS Interface Card	NRC	$20,240.17	$15,569.36	1.30	1.20	0.92
29	Add'l Spares - Common	NRC	$201,505.81	$155,004.47	1.30	1.20	0.92
30	FT-2000 A/D MUX (DS3/STS-1/OC3)						
31	Common Equipment	NRC	$903,391.75	$694,916.73	1.30	1.20	0.92
32	DS3 Interface Card	NRC	$19,908.37	$15,314.13	1.30	1.20	0.92
33	STS-1 LS Interface Card	NRC	$20,240.17	$15,569.36	1.30	1.20	0.92
34	OC3 Optical Card	NRC	$21,899.20	$16,845.54	1.30	1.20	0.92
35	Add'l Spares - Common	NRC	$201,505.81	$155,004.47	1.30	1.20	0.92
36	FT-2000 ADD/DROP MUX (48 DS3s)						
37	Common Equipment	NRC	$881,890.71	$678,377.47	1.30	1.20	0.92
38	DS3 Interface Card	NRC	$19,908.37	$15,314.13	1.30	1.20	0.92
39	Add'l Spares - Common	NRC	$201,505.81	$155,004.47	1.30	1.20	0.92
40	DACS IV-2000						
41	Common Equipment	NRC			1.30	1.20	0.92
42	DS1 Interface Circuit Pack	NRC	$25,084.54	$19,295.80	1.30	1.30	1.00
43	DS3 Interface Circuit Pack	NRC	$10,750.52	$8,269.63	1.30	1.20	0.92
44	STS-1 Interface Circuit Pack	NRC	$14,931.27	$11,485.59	1.30	1.30	1.00
45	Add'l Spares - Common	NRC	$281,716.60	$216,705.08	1.30	1.20	0.92
46	DACS II-160 DS1s						
47	Common Equipment	NRC	$870,031.97	$669,255.36	1.30	1.20	0.92
48	DS1 Interface Circuit Pack	NRC	$4,598.83	$3,537.56	1.30	1.30	1.00
49	Add'l Spares - Common	NRC	$173,252.53	$133,271.18	1.30	1.20	0.92
50	DDM-1000 DUAL MUX DS3 ELEC						
51	Common Equipment	NRC	$175,691.31	$135,147.16	1.30	1.20	0.92
52	DS1 Interface Card	NRC	$3,683.04	$2,833.11	1.30	1.30	1.00
53	Add'l Spares - Common	NRC	$56,639.30	$43,568.69	1.30	1.20	0.92
54	DDM-1000 DUAL MUX DS3 OP						
55	Common Equipment	NRC	$233,226.47	$179,404.98	1.30	1.20	0.92
56	DS1 Interface Card	NRC	$3,683.04	$2,833.11	1.30	1.30	1.00
57	Add'l Spares - Common	NRC	$56,639.30	$43,568.69	1.30	1.20	0.92

U S West EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
58	ALCATEL EQUIPMENT						
59	1603SM LIGHTWAVE TERMINAL						
60	Common Equipment	NRC	$124,029.10	$95,407.00	1.30	1.20	0.92
61	DS3 Low Speed Interface	NRC	$7,565.18	$5,819.37	1.30	1.20	0.92
62	Add'l Spares – Common	NRC	$39,471.65	$30,362.81	1.30	1.20	0.92
63	1612SM LIGHTWAVE TERMINAL						
64	Common Equipment	NRC	$175,326.32	$134,866.40	1.30	1.20	0.92
65	DS3 Low Speed Interface	NRC	$4,578.93	$3,522.25	1.30	1.20	0.92
66	Add'l Spares – Common	NRC	$55,282.20	$42,524.77	1.30	1.20	0.92
67	1624SM LIGHTWAVE TERMINAL						
68	Common Equipment	NRC	$290,877.77	$223,752.13	1.30	1.20	0.92
69	DS3 Low Speed Interface	NRC	$11,945.02	$9,188.48	1.30	1.20	0.92
70	Add'l Spares – Common	NRC	$89,753.53	$69,041.18	1.30	1.20	0.92
71	1648SM LIGHTWAVE TERMINAL						
72	Common Equipment	NRC	$475,743.52	$365,956.55	1.30	1.20	0.92
73	DS3 Low Speed Interface	NRC	$12,677.76	$9,752.12	1.30	1.20	0.92
74	Add'l Spares – Common	NRC	$166,234.84	$127,872.95	1.30	1.20	0.92
75	TM–50						
76	Common Equipment	NRC	$70,900.32	$54,538.71	1.30	1.20	0.92
77	DS1 Interface	NRC	$447.94	$344.57	1.30	1.30	1.00
78	Add'l Spares – Common	NRC	$24,055.94	$18,504.57	1.30	1.20	0.92
79	ADM–50						
80	Common Equipment	NRC	$126,043.16	$96,956.28	1.30	1.20	0.92
81	DS1 Interface	NRC	$447.94	$344.57	1.30	1.30	1.00
82	Add'l Spares – Common	NRC	$33,884.03	$26,064.64	1.30	1.20	0.92
83	DMX–3003						
84	Common Equipment	NRC	$871,024.06	$670,018.51	1.30	1.20	0.92
85	M13	NRC	$34,142.85	$26,263.73	1.30	1.20	0.92
86	Add'l Spares – Common	NRC	$17,685.27	$13,604.05	1.30	1.20	0.92
87	LTS–1565 LIGHTWAVE TERMINAL						
88	Common Equipment	NRC	$339,072.60	$260,825.08	1.30	1.20	0.92
89	DS3 Interface	NRC	$5,242.54	$4,032.72	1.30	1.20	0.92
90	Add'l Spares – Common	NRC	$106,177.94	$81,675.34	1.30	1.20	0.92
91	ADC TELECOMMUNICATIONS EQUIP.						
92	SONEPLEX						
93	Common Equipment	NRC	$44,024.03	$33,864.64	1.30	1.20	0.92
94	DS1 Port	NRC	$1,327.22	$1,020.94	1.30	1.30	1.00
95	Add'l Spares – Common	NRC	$9,721.92	$7,478.40	1.30	1.20	0.92

U S West EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
96	FUJITSU EQUIPMENT						
97	FLM–50/150 LTE						
98	Common Equipment	NRC	$57,548.44	$44,268.03	1.30	1.20	0.92
99	Channel Card Per 4 DS1s	NRC	$2,060.51	$1,585.01	1.30	1.20	0.92
100	Add'l Spares – Common	NRC	$19,397.38	$14,921.06	1.30	1.20	0.92
101	FLM–150 ADM						
102	Common Equipment	NRC	$115,783.72	$89,064.40	1.30	1.20	0.92
103	Channel Card Per 4 DS1s	NRC	$2,080.43	$1,600.33	1.30	1.20	0.92
104	Add'l Spares – Common	NRC	$41,223.59	$31,710.45	1.30	1.20	0.92
105	FLM–600 LTE						
106	Common Equipment	NRC	$300,181.62	$230,908.94	1.30	1.20	0.92
107	Channel Card Per 3 DS3s	NRC	$11,493.77	$8,841.36	1.30	1.20	0.92
108	Add'l Spares – Common	NRC	$104,090.88	$80,069.91	1.30	1.20	0.92
109	FLM–600 ADM						
110	Common Equipment	NRC	$220,378.94	$169,522.26	1.30	1.20	0.92
111	Channel Card Per 3 DS3s	NRC	$11,493.77	$8,841.36	1.30	1.20	0.92
112	Add'l Spares – Common	NRC	$82,559.98	$63,507.68	1.30	1.20	0.92
113	FLM–2400–ADM						
114	Common Equipment	NRC	$601,471.47	$462,670.36	1.30	1.20	0.92
115	Channel Card Per 3 DS3s	NRC	$6,407.18	$4,928.60	1.30	1.20	0.92
116	Add'l Spares – Common	NRC	$159,814.38	$122,934.14	1.30	1.20	0.92
117	NORTHERN TELECOM						
118	S/MDS TRANSPORT NODE–OC3						
119	Common Equipment	NRC	$100,079.34	$76,984.11	1.30	1.20	0.92
120	Channel Card Per DS3	NRC	$9,984.04	$7,680.03	1.30	1.20	0.92
121	Add'l Spares – Common	NRC	$22,463.27	$17,279.44	1.30	1.20	0.92
122	S/MDS TRANSPORT NODE–OC12						
123	Common Equipment	NRC	$175,930.21	$135,330.93	1.30	1.20	0.92
124	Channel Card Per DS3	NRC	$9,984.04	$7,680.03	1.30	1.20	0.92
125	Add'l Spares – Common	NRC	$34,232.43	$26,332.64	1.30	1.20	0.92
126	S/MDS TRANSPORT NODE–OC48						
127	Common Equipment	NRC	$577,986.24	$444,604.80	1.30	1.20	0.92
128	Channel Card Per DS3	NRC	$9,984.04	$7,680.03	1.30	1.20	0.92
129	Add'l Spares – Common	NRC	$118,461.40	$91,124.15	1.30	1.20	0.92
130	FD565 FIBER MULTIPLEXER						
131	Common Equipment	NRC	$137,941.73	$106,109.02	1.30	1.20	0.92
132	Channel Card Per DS3	NRC	$4,054.67	$3,118.98	1.30	1.20	0.92
133	Add'l Spares – Common	NRC	$46,681.79	$35,909.07	1.30	1.20	0.92
134	FMT–150D FIBER MULTIPLEXER						
135	Common Equipment	NRC	$412,919.36	$317,630.28	1.30	1.20	0.92
136	Channel Card Per DS3	NRC	$2,479.49	$1,907.30	1.30	1.20	0.92
137	Add'l Spares – Common	NRC	$17,360.10	$13,353.92	1.30	1.20	0.92
138	DMT–300 COPPER M1–3 MULTIPLEXER						
139	Common Equipment	NRC	$347,948.42	$267,652.63	1.30	1.20	0.92
140	Channel Card Per DS1	NRC	$915.79	$704.45	1.30	1.30	1.00
141	Add'l Spares – Common	NRC	$8,238.75	$6,337.50	1.30	1.20	0.92

U S West EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
142	NEC EQUIPMENT IMT – 150 (OC 3)						
143	Common Equipment	NRC	$111,145.07	$85,496.21	1.30	1.20	0.92
144	DS1 Interface Card	NRC	$437.98	$336.91	1.30	1.30	1.00
145	DS3 Interface Card	NRC	$6,118.50	$4,706.54	1.30	1.20	0.92
146	Add'l Spares	NRC	$44,116.93	$33,936.10	1.30	1.20	0.92
147	ITS – 600 (OC 12)						
148	Common Equipment	NRC	$214,804.60	$165,234.31	1.30	1.20	0.92
149	DS3 Interface Card	NRC	$3,799.19	$2,922.45	1.30	1.20	0.92
150	Add'l Spares	NRC	$82,772.34	$63,671.03	1.30	1.20	0.92
151	ITS – 2400 (OC 48)						
152	Common Equipment	NRC	$640,677.67	$492,828.98	1.30	1.20	0.92
153	DS3 Interface Card	NRC	$3,799.19	$2,922.45	1.30	1.20	0.92
154	Add'l Spares	NRC	$189,301.98	$145,616.91	1.30	1.20	0.92
155	RC – 28D ASYNC M–X3 Mux (optional)						
156	Common Equipment	NRC	$79,799.36	$61,384.12	1.30	1.20	0.92
157	Add'l Spares	NRC	$14,931.27	$11,485.59	1.30	1.20	0.92

U S West EIS Overhead Analysis

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	Virtual EIS Rate Elements	Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
158	Tellabs Equipment					
159	Titan 5500 digital Cross Connect System					
160	Common Equipment	$1,669,803.50	$1,284,464.23	1.30	1.20	0.92
161	DS1 Interface	$6,390.58	$4,915.83	1.30	1.30	1.00
162	DS3 Interface	$13,020.07	$10,015.44	1.30	1.20	0.92
163	STS-1 Interface	$16,633.44	$12,794.95	1.30	1.30	1.00
164	Add'l Spares - Common	$127,296.73	$97,920.56	1.30	1.20	0.92
165	Titan 532 Digital Cross Connect System					
166	Common Equipment	$200,533.33	$154,256.41	1.30	1.20	0.92
167	5342 DS3 Slot	$33,180.60	$25,523.54	1.30	1.20	0.92
168	5301Z DS1 Port	$2,229.73	$1,715.18	1.30	1.30	1.00
169	Add'l Spares - Common	$94,612.84	$72,779.11	1.30	1.20	0.92
170	DSC Communications Equipment					
171	CS1 7', 84 DS1s, 3 DS3s					
172	Common Equipment	$284,418.34	$218,783.34	1.30	1.20	0.92
173	DS1 Port	$1,866.41	$1,435.70	1.30	1.30	1.00
174	DS3 Port	$44,793.81	$34,456.78	1.30	1.20	0.92
175	Add'l Spares - Common	$61,479.51	$47,291.93	1.30	1.20	0.92
176	ECS1L 7', 2016 DS1s, 72 DS3s					
177	Common Equipment	$1,660,792.98	$1,277,533.06	1.30	1.20	0.92
178	DS1 Port	$522.60	$402.00	1.30	1.30	1.00
179	DS3 Port	$13,687.00	$10,528.46	1.30	1.20	0.92
180	Add'l Spares - Common	$118,305.45	$91,004.19	1.30	1.20	0.92

U S West EIS Overhead Analysis

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	Virtual EIS Rate Elements		Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
181	AT&T EQUIPMENT						
182	DDM-2000 OC3						
183	COMMON EQUIPMENT	NRC	$72,365.36	$60,304.47	1.20	1.20	1.00
184	CHANNEL CARD PER DS1	NRC	$2,421.00	$1,862.31	1.30	1.30	1.00
185	CHANNEL CARD PER 3 DS3s	NRC	$6,942.41	$5,785.34	1.20	1.20	1.00
186	ADD'L SPARES-COMMON	NRC	$48,980.70	$40,817.25	1.20	1.20	1.00
187	DDM-2000 OC12						
188	COMMON EQUIPMENT	NRC	$133,079.75	$110,899.79	1.20	1.20	1.00
189	CHANNEL CARD PER 3 DS3s	NRC	$11,619.59	$9,682.99	1.20	1.20	1.00
190	ADD'L SPARES-COMMON	NRC	$68,821.68	$57,351.40	1.20	1.20	1.00
191							
192	VEIC EQUIPMENT BAY PER SHELF		$11.69	$8.99	1.30	1.20	0.92
193	48 VOLT DC POWER CABLE						
194	20 AMP FEED		$5.07	$3.90	1.30	1.20	0.92
195	40 AMP FEED		$6.98	$5.37	1.30	1.20	0.92
196	60 AMP FEED		$8.76	$6.74	1.30	1.20	0.92
197	48 VOLT DC POWER CABLE						
198	20 AMP FEED	NRC	$3,442.62	$2,648.17	1.30	1.20	0.92
199	40 AMP FEED	NRC	$4,738.81	$3,645.24	1.30	1.20	0.92
200	60 AMP FEED	NRC	$5,951.65	$4,578.19	1.30	1.20	0.92
201	VEIC ENGINEERING						
202	DURING NORMAL BUS. (1/2 HR)	NRC	$25.79	$19.84	1.30	1.20	0.92
203	AFTER NORMAL BUS. (1/2 HR)	NRC	$39.30	$30.23	1.30	1.20	0.92
204	VEIC EQUIPMENT LABOR						
205	DURING NORMAL BUS. (1/2 HR)	NRC	$29.89	$22.99	1.30	1.20	0.92
206	AFTER NORMAL BUS. (1/2 HR)	NRC	$44.80	$34.46	1.30	1.20	0.92

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FCC 93-134

In the Matter of	)	
	)	
Amendment to Part 61 of the	)	
Commission's Rules Requiring	)	CC Docket No. 93-55
Metric Conversion of Tariff	)	
Publications and Supporting	)	
Information	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: March 8, 1993 ; Released: April 8, 1993

Comment Date: May 26, 1993
Reply Comment Date: June 10, 1993

By the Commission:

I. INTRODUCTION

1. By this Notice, the Commission seeks to amend Part 61 of the rules regarding the filing of tariffs and supporting documentation to incorporate metric units of measurement. This proposed amendment advances the goal of the Metric Conversion Act[1] and acknowledges the increased use of metric units of measurement in this country. The Act establishes the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. Further, the Act, as amended, requires that certain federal agencies, not including the FCC, use the metric system in their procurements, grants, and other business-related activities, to the extent feasible, by September 30, 1992. Consistent with the goals of the Act, we propose to amend Part 61 by adding Section 61.37.

II. BACKGROUND

2. The Metric Conversion Act of 1975[2] declared a national policy that the metric system of measurement be employed wherever possible. The Act established a committee for metric policy development and coordination for the federal government, the Interagency Committee on Metric Policy (Interagency

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[1] See Metric Conversion Act of 1975, Pub. L. 94-168, 89 Stat. 1007 (1975), as amended by Pub. L. 100-418, 102 Stat. 1107 (1988) (codified at 15 U.S.C. § 205 et. seq).

[2] Amended by Public Law 100-418, 100th Congress, H.R. 4848 (August 23, 1988).

Committee).[3] That Committee has set a metric conversion policy for federal agencies through broad guidelines for carrying out federal responsibilities under the Act.

3. The Interagency Committee recommends that federal agencies support the goals of the national metric policy by ensuring: 1) that any of their regulations or requirements that are measurement-sensitive[4] will accommodate the voluntary transition to use of the metric system; and 2) that the metric measurement expressions used are both meaningful and practical. The Act, as amended, specifies that complete conversion of appropriate rules and regulations for those agencies covered by this requirement be accomplished by September 30, 1992.

III. DISCUSSION

4. Although the Commission has been converting its rules to the metric system of measurement as the rules have been routinely updated, not all existing rules have been converted.

5. Part 61 of our rules does not contain units of measure that are measurement-sensitive, e.g., measures of distance (miles) or weights (pounds). However, Part 61 requires certain carriers to meet certain filing requirements for tariff filings and revisions. In complying with these tariff filing requirements, a carrier uses various measurement-sensitive units of measure that we believe should be subject to metric conversion. We believe that this conversion will advance the intent of Congress in establishing the national metric policy.

Proposed Rule

6. For the above reasons, the Commission proposes amending Part 61 of the rules by adding Section 61.37, Use of Metric Measurement, as set forth in Appendix A. In keeping with the recommendations and procedures outlined in the Metric Handbook For Federal Officials developed by the Interagency Committee, the Commission's proposed amendment offers the industry three options.[5]

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[3] The Interagency Committee is a committee composed of senior representatives of the 38 member federal agencies, including the FCC, that assist in formulating federal metric policies in consultation with the private sector.

[4] A "measurement-sensitive" law, regulation, recordkeeping requirement or reporting requirement is one whose application or meaning depends substantially on some measured quantity. The mere presence of dimensions or measurement terms does not necessarily make an item "measurement-sensitive."

[5] Specifically, the Handbook emphasizes that the acceptability of particular measurement units to a given industry or sector may not be apparent to an agency. The Handbook appears to recognize that all conversions may not be feasible. Therefore, it is important to ensure adequate opportunity for comments by any affected industries as well as the general public, on proposed

7. Generally, a carrier would be required to express measurement-sensitive information in a tariff publication in metric units. The first option would require a carrier to provide in the general rules section of a tariff publication, a table for converting non-metric units and corresponding rates to metric units.[6] This option does not require that a metric unit or corresponding rate appear in the tariff or supporting information. The second option would allow the carrier to state in the applicable rate section of the tariff publication and in supporting information, the metric unit and corresponding rate in parenthesis beside the non-metric unit and rate. The third option would require a carrier to provide in its tariff a conversion table for converting non-metric units and corresponding rates into metric units and rates. Only the resulting metric unit and rate must be clearly shown in the tariff publication and in all supporting information filed with the Commission.

8. We recognize that any conversion to metric measure will impose some burden on carriers and their customers. Nevertheless, we tentatively believe that it would be consistent with the national metric policy that we place such burdens on carriers and customers. Our proposal to let carriers select from among three options how they will meet this obligation, should go far toward minimizing such burdens.

9. We recognize that option 1 may not go far enough promoting the nation's measurement units to metric. In addition, having multiple options may increase customer confusion. We therefore ask for comments on whether the public interest is best served by the optional approach we have proposed or whether it would be, on balance, better simply to mandate that only one of the options be employed by all carriers. We also request comment on whether there is some other metric conversion rule that would strike a better balance among the goals of encouraging metric conversion, reducing customer confusion and minimizing burdens on carriers and customers alike.

10. Compliance with the proposed rule need not require a special filing for implementation. We propose to allow carriers a period of two years to make the necessary conversions as they routinely file tariff revisions. We seek comment on whether this would ameliorate the burden on carriers and customers created by the conversion requirement. We believe that the larger carriers, classified as Tier 1 carriers, have the resources which should permit this conversion without undue burden. Moreover, they already compete in international markets which use the metric system of measurement. The first option offers smaller carriers a way to comply with the national metric policy with minimal burden.

11. Accordingly, we seek comments on this proposal from the affected industries as well as the general public.

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changes in the use of measurement units.

[6] For example, rates that are expressed in dollars and cents per mile would be stated in converted dollars and cents per kilometer.

IV. PROCEDURAL MATTERS

A. Ex parte Requirements

12. This is a non-restricted notice and comment rulemaking proceeding. Ex-parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission rules. See generally 47 C.F.R. §§ 1.1203, 1.1203, and 1.1206(a).

B. Regulatory Flexibility Act - Initial Analysis

13. **Reason for action.** The Commission is issuing this Notice of Proposed Rulemaking to make its rules consistent with the goals of the Metric Conversion Act of 1975, as amended.

14. **Objective.** The objective of this Notice of Proposed Rulemaking is to conform the Commission tariff reporting requirements to the metric conversion trends in the Nation.

15. **Legal Basis.** Sections 1, 4(i), 4(j), 201-205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 303(r).

16. **Description, potential impact, and number of small entities affected.** The proposed rule would require metric information to be included in tariff transmittals. A carrier subject to tariff filing requirements must adopt one of three options to comply with this proposed rule. Conversion to metric measure will impose some burden on carriers and customers. However, carriers will be allowed to make the necessary conversions as they routinely file tariff revisions subject to a two year deadline for complete conversion. The definition of a "small entity" in Section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although local exchange companies do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service area, we recognize that some small local exchange carriers may feel some economic impact due to the proposed rule. The Commission has found all exchange carriers to be dominant in the Competitive Carrier proceeding. 85 FCC 2d 1, 23-24 (1980). To the extent that small telephone carriers will be affected, option one limits any possible burden, minimizing the rule's effects for smaller carriers.

17. **Reporting, recordkeeping, and other compliance requirements.** The proposed rule will require carriers to provide a conversion table for determining the metric unit and corresponding rate, at a minimum, or to state the metric unit and corresponding rate simultaneously with the non-metric unit and rate in a more complex format. The proposed rule will not require a special filing for implementation and imposes no new recordkeeping requirements for either the minimum or more complex format.

18. **Federal rules which overlap, duplicate, or conflict with the Commission's proposal.** None.

19. **Any significant alternatives minimizing impact on small entities and consistent with stated objectives.** The Notice of Proposed Rulemaking solicits comments on whether there is some other metric conversion rule that would strike a better balance among the goals of encouraging metric conversion, reducing customer confusion and minimizing burdens on carriers and customers alike.

20. **Comments are solicited.** We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines as comments on other issues in this Notice of Proposed Rulemaking, but must have a separate heading designating them as Responses to this Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. § 601, et seq.

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed rule amendment described above, and that COMMENT IS SOUGHT on this proposal.

22. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before May 26, 1993. Reply comments should be filed no later than June 10, 1993. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street, N.W., Washington, D.C. Parties should also file one copy of any documents filed in this docket with this Commission's copy contractor, International Transcription Service, Inc., 1919 M Street, N.W., Room 246, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Secretary

Editor's Note: A summary of this Notice of Proposed Rulemaking has been published in the Federal Register. See 58 FR 26087 (April 30, 1993).

APPENDIX A

AMENDMENT TO THE CODE OF FEDERAL REGULATIONS

Part 61 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 61---TARIFFS

1. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.37 is added to read as follows:

Section 61.37 Use of Metric Measurement

All general rules, regulations, exceptions, conditions, and rates contained in a tariff publication and in supporting information that are measurement sensitive must employ one of the following options relating to the use of metric measurement. A carrier may employ only one option throughout all tariff publications and supporting information filed by that carrier.

A carrier may choose to provide a conversion table for converting non-metric units and corresponding rates to metric units and rates in the general rules section of a tariff publication.

A carrier may choose to state in the applicable rate section of the tariff publication and in supporting information, the metric unit and corresponding rate in parenthesis simultaneously with the non-metric unit and rate.

A carrier may choose to provide a conversion table for converting the non-metric units and corresponding rates contained in a tariff publication and in supporting information filed with the Commission to metric units and rates. The resulting metric unit and corresponding rate must be shown in the tariff publication and in the supporting information filed with the Commission.